TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 38

JOHN E. ROCHE, PLAINTIFF IN ERROR,

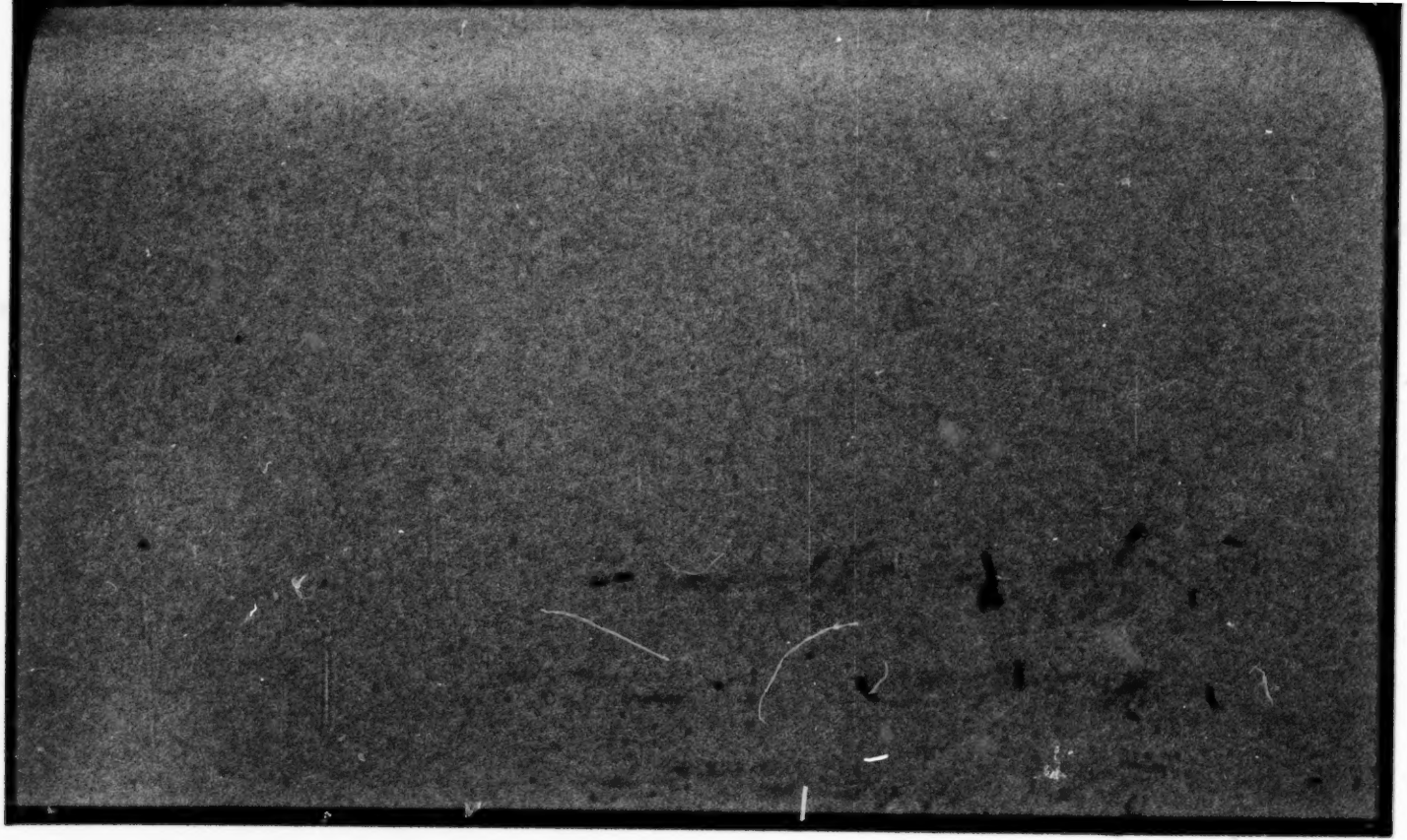
vs.

D. E. McDONALD

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

[redacted]

(21,001)



(31,801)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 326

JOHN H. ROCHE, PLAINTIFF IN ERROR,

vs.

D. K. McDONALD

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

INDEX

	Original	Print
Record from superior court of Spokane County	1	1
Bill of complaint	1	1
Answer	3	2
Exhibit "A"—Bill of complaint in case of Roche vs. McDonald et al. in circuit court of Marion County	7	5
Reply	10	7
Findings of fact and conclusion of law	12	8
Exception to findings of fact	14	10
Judgment	15	10
Testimony of D. K. McDonald	16	11
Testimony of John H. Roche	18	12
Clerk's certificate	omitted in printing	24
Proceedings in supreme court of Washington	25	16
Opinion, Parker, J.	25	16

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	Original	Print
Judgment	33	23
Petition for writ of error	34	24
Assignments of error	35	24
Order allowing writ of error	37	26
Bond on writ of error (omitted in printing)	38	
Affidavit of service of praecipe	40	27
Praecipe for transcript of record	41	27
Writ of error	42	28
Citation and service (omitted in printing)	45	
Clerk's certificate (omitted in printing)	47	
Statement of points to be relied upon and designation by plaintiff in error of parts of the record to be printed, with affidavit of service	48	30

[fols. A & 1]

IN SUPERIOR COURT OF SPOKANE COUNTY

No. 73637

JOHN H. ROCHE, Plaintiff,

vs.

D. K. McDONALD, Defendant

BILL OF COMPLAINT—Filed October 25, 1924

Plaintiff complains of defendant and for cause of action alleges:

I

That at all times herein mentioned the Circuit Court of the State of Oregon, in and for the County of Marion, was a Court of general jurisdiction, duly created and organized by the Constitution and laws of the State of Oregon.

II

That on the first day of October, A. D. 1924, in the Circuit Court of the State of Oregon for the County of Marion, this plaintiff recovered a judgment against the defendant, D. K. McDonald, in the sum of Eighteen Thousand Two Hundred Eighty three Dollars and 98/100 ($18,283.98), together with interest thereon at the rate of six per cent per annum, and for the sum of Fifteen Dollars ($15) for plaintiff's costs and disbursements.

III

That said above named Court had jurisdiction of the person of said D. K. McDonald and of the subject matter of the suit in which said judgment was rendered.

IV

That said judgment mentioned herein was rendered in an action pending in the above named Court wherein this plaintiff was plaintiff and said defendant D. K. McDonald,

[fol. 2] was defendant; that said cause was numbered on the docket of the above named Court, 16918.

V

That said judgment remains wholly unpaid and unsatisfied.

Wherefore plaintiff prays that he have judgment against the defendant, D. K. McDonald, in the sum of Eighteen Thousand Two Hundred Eighty three and 98 100 Dollars ($18,283.98) together with interest thereon at the rate of six per cent per annum from the first day of October A. D. 1924.

F. W. Girand, Attorney for Plaintiff.

Duly sworn to by John H. Rocke. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 3] In Superior Court of Spokane County

[Title omitted]

Answer—Filed January 29, 1925

For answer to the complaint, defendant:

1. Admits the allegations contained in the first, second, fourth and fifth paragraphs of the complaint.

2. Admits that the court referred to in the complaint had jurisdiction of the person of defendant; denies that it had jurisdiction of the subject matter of the suit in which the judgment sued upon was rendered, save to the extent and for the purposes indicated by the affirmative matter hereinafter pleaded.

Further answering and for an affirmative defense, defendant alleges:

1. Plaintiff is, and for more than thirty years last past has been, continuously a citizen and resident of the State of Washington. He is and during the whole of the period

aforesaid has been, an attorney and counsellor at law, licensed to practice law in the courts of the State of Washington, having his domicile and being engaged in the practice of his profession in the City and County of Spokane in said State. Defendant is, and for more than forty years last past has been, a citizen and resident of the State of Washington. During the last thirty years he has been engaged in business and has continuously resided with his family in the City and County of Spokane in said State, and has maintained a house of usual abode therein, oc- [fol. 4] cupied by himself and his family. At no time during the period aforesaid has he resided or had any property of any character in the State of Oregon. For at least the last thirty years plaintiff has known defendant personally, and has known that his residence was in the City and County of Spokane, and that he had neither residence nor property in the State of Oregon.

2. In the year 1917, L. S. Dart and his wife began an action ex delicto against this defendant and others in the Superior Court of the State of Washington for Spokane County, seeking to recover damages for a tort alleged to have been committed by the defendants in such action, the cause being numbered 54,589 upon the docket of the court. Thereafter, upon, to wit; June 24, 1918, judgment for $12,750, together with costs, was rendered in that action in favor of the plaintiffs therein and against this defendant and others named as defendants therein. No proceedings were ever thereafter taken to revive such judgment, nor was any action brought thereon in the courts of the State of Washington, or elsewhere, save the action brought in the courts of the State of Oregon, as hereinafter alleged.

3. On February 27, 1924, the Darts, judgment creditors in the cause No. 54589 referred to in the preceding paragraph, assigned the judgment aforesaid to the plaintiff herein, and he thereafter in March, 1924, brought an action thereon in the Circuit Court of the State of Oregon for Marion County. The complaint in said action is attached to this answer, marked "Exhibit A," and is prayed to be read as a part hereof as though fully set forth at this point. Service of the summons in such action was made upon this defendant while he was temporarily within the State of

Oregon, and thereafter, upon, to-wit, October 1, 1924, judgment was rendered therein by the court aforesaid upon the [fol. 5] cause of action pleaded in "Exhibit A" in favor of plaintiff and against defendant for the sum of $18,283.98. No execution was ever issued upon such judgment, or was any attempt to enforce it in any way ever made in the State of Oregon.

4. The judgment sued upon herein was rendered by the Circuit Court of the State of Oregon in and for Marion County upon the complaint attached to this answer as Exhibit A. It was rendered in an action brought in the Circuit Court of Oregon aforesaid upon the judgment rendered by the Superior Court of the State of Washington for Spokane County upon June 24, 1918, in the cause No. 54,586 referred to in the second paragraph of this affirmative defense, and there was no other foundation for the Oregon judgment sued upon herein than the judgment rendered by the Washington court on June 24, 1918, heretofore referred to.

5. Plaintiff knew that he could not, and did not intend to attempt to, enforce the judgment recovered by him in the courts of Oregon within that State. His sole purpose in suing in the courts of Oregon upon the judgment recovered in the courts of Washington was to evade the operation of the Washington statutes relating to the duration of the lien and charge of judgments rendered by the courts of Washington, and by procuring a judgment in the courts of Oregon upon the Washington judgment, and then suing upon the Oregon judgment in the courts of Washington, to continue the lien and charge within the State of Washington of the original Washington judgment, rendered on June 24, 1918, as aforesaid, for a longer period than that permitted by Sections 459 460 of Remington's Compiled Statutes of Washington.

Wherefore, having fully answered, defendant prays that this action may be dismissed; that he go hence without day and recover his costs.

Graves, Kizer & Graves, Attorneys for Defendant.

[fol. 6] Due service of the within Answer accepted this 31st day of December, 1924.

F. W. Girand, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 7] EXHIBIT A TO ANSWER

IN THE CIRCUIT COURT OF THE STATE OF OREGON IN AND FOR THE COUNTY OF MARION

JOHN H. ROCHE, Plaintiff,

vs.

D. K. McDONALD and MAUD S. McDONALD, His Wife; GEORGE E. SNYDER, and D. A. McKINNON, Defendants

Complaint

The plaintiff complains of defendants and each of them and for cause of action alleges:

I

That at all times hereinafter mentioned the Superior Court of the State of Washington in and for the County of Spokane, in the State of Washington, was a Court of general jurisdiction, duly created and organized by the constitution and laws of said State of Washington.

II

That on the 24th day of June, 1918, the above named Court mentioned in Paragraph I hereof, rendered a Judgment against the above named defendants D. K. McDonald and Maud S. McDonald, his wife, George E. Snyder and D. A. McKinnon in the cause of L. S. Dart and C. Florence Dart vs. D. K. McDonald and Maud S. McDonald, his wife, D. M. Drumheller, John Twohy, Frank S. Ostrander, D. A. McKinnon, George E. Snyder, John F. Green and Eric T. Richter, the number of said cause on the Docket of said Court mentioned in paragraph I hereof being 54589, said Judgment being rendered against each of the above named

defendants in this cause in the sum of Twelve Thousand Seven Hundred and Fifty ($12,750.00) Dollars, and costs in the sum of Three Hundred Eighty six and 62 100 ($386.62) Dollars. That said judgment bears interest at the rate of Six (6) per cent per annum from the 24th day of June, 1918.

[fol. 8] III

That at the time of the rendition of said Judgment, the Court named in Paragraph one hereof had jurisdiction of the persons of each of the defendants in this cause and of the subject matter.

IV

That said above described Judgment, ever since the date of its rendition, has been and now is a valid and subsisting judgment against each of the defendants named in this cause and is wholly unsatisfied and unpaid.

V

That there is now due and owing upon said Judgment the sum of Seventeen Thousand Six Hundred Seven six and 57 100 ($17,676.57) Dollars.

VI

That on the 27th day of February, 1924, at Spokane, Washington, the said L. S. Dart and C. Florence Dart, plaintiffs in the above described judgment, for a valuable consideration, assigned said Judgment to this plaintiff, and ever since said time has been, and now is the legal owner and holder thereof.

Wherefore plaintiff prays that we have judgment against the defendants D. K. McDonald and Maud S. McDonald, his wife, George E. Snyder and D. A. McKinnon in the sum of Seventeen Thousand Six Hundred Seventy six and 57 100 ($17,676.57) Dollars, with interest thereon from date of judgment at the legal rate per annum, and for his costs and disbursements herein.

F. W. Girard, Attorney for Plaintiff. John H. Roche, In Propria Persona.

[fol. 9] *Duly sworn to by John H. Roche. Jurat omitted in printing.*

[fol. 10] IN SUPERIOR COURT OF SPOKANE COUNTY

[Title omitted]

REPLY—Filed March 18, 1925

Now comes the plaintiff and replies to defendant's affirmative defense and alleges as follows:

I

Denies that at no time during the period mentioned in paragraph one, defendant has resided or had any property of any character in the State of Oregon; and in this connection alleges that for a goodly portion of time during the past three or four years, the defendant has been in the State of Oregon, and has had and now has large property interests near West Stayton, County of Marion, State of Oregon, and denies each and every other material allegation contained in said paragraph one.

II

Denies each and every allegation contained in paragraph five of defendant's affirmative defense and in this connection alleges that this plaintiff intended to prosecute said action in Oregon and did prosecute the same in good faith; that he believed then and believes now that the defendant had property interests in the State of Oregon and now has interests in property in the State of Oregon.

III

And in reply generally to the affirmative matters set out in defendant's answer, plaintiff alleges: That this action is brought under Article four, Section one of the Federal Constitution as follows: Full faith and credit shall be given [fol. 11] in each state to the public acts, records, and judicial proceedings of every other state and the Congress may, by general laws, prescribe the manner in which such acts,

records, and proceedings shall be proved and the effect thereof.

Wherefore, plaintiff prays that having fully replied to defendant's Answer and Affirmative Defense, that he have judgment according to the prayer of his complaint herein.

F. W. Girand, Attorney for Plaintiff.

Duly sworn to by John H. Roche. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 12] In Superior Court of Spokane County

[Title omitted]

Findings of Fact and Conclusion of Law—Filed March 24, 1925

1. Plaintiff is and for more than thirty years last past has been continuously a citizen and resident of the State of Washington. During the whole of that period he has been actively engaged in the practice of law in the City and County of Spokane in said State.

2. Defendant now is and for more than thirty years last past has been a citizen and resident of the City and County of Spokane in the State of Washington, and during the whole of that time he has maintained a house of usual abode therein occupied by himself and his family. At no time has the defendant resided or had property of any character in the State of Oregon. For at least the last thirty years plaintiff has known the defendant personally and has known that his residence was in the City and County of Spokane in the state aforesaid.

3. Plaintiff claims to have had some kind of general and indefinite information communicated to him that the defendant owned property in the State of Oregon. Apparently, however, he did not pursue the subject further, either before or after the bringing of the suit and obtaining of the judgment in Oregon alleged in the pleadings in this case.

4. Defendant was served in the Oregon case while he was temporarily in the State of Oregon.

[fol. 13] 5. Plaintiff has taken no steps to enforce the Oregon judgment in the State of Oregon; that judgment was rendered, as is admitted by the pleadings, upon the 1st day of October, 1924. On the 25th of the same month this suit was brought in this court. The plaintiff has done nothing with his Oregon judgment beyond suing upon it in the State of Washington.

6. Whatever plaintiff's purpose may have been in suing in the State of Oregon and taking the judgment, the course pursued by him since is consistent only with the purpose and intention of evading the statute of this state upon the life of a judgment and of obtaining an extension for another six years of the judgment rendered in this court against the defendant.

7. All other material facts in the case are admitted by the pleadings.

Conclusion of Law

It is the conclusion of the Court upon the foregoing facts found and upon the facts admitted by the pleadings that plaintiff is not entitled to recover and that defendant should have judgment.

Done in open Court this 24th day of March, 1925.

Wm. A. Huneke, Judge.

Copy of the within Findings of Fact and Conclusion of Law received this — day of March, 1925.

————, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 14] In Superior Court of Spokane County

[Title omitted]

Exceptions to Findings of Fact—Filed March 28, 1925

Now comes the plaintiff and excepts to Findings of Fact No. 6, made and signed by the Court.

F. W. Girand, Attorney for Plaintiff

Service of Copy accepted March 28, 1925. ——, Attorney for Defendant.

[File endorsement omitted.]

[fol. 15] In Superior Court of Spokane County

[Title omitted]

Judgment—Filed March 24, 1925

This cause having been tried by the Court without a jury, and the Court having heard the testimony and having made Findings of Fact and having stated its Conclusion thereon, and being fully advised in the premises, upon such testimony and findings and the whole record in the case.

It is considered by the Court here that plaintiff take nothing by his said suit; that defendant go hence without day and have and recover his costs to be taxed.

Done in open Court this 24th day of March, 1925.

Wm. A. Huneke, Judge

Copy of the within Judgment received this —— day of March, 1925. ——, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 16] D. K. McDonald, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. Graves:

Q. Mr. McDonald, you are the defendant in this case?
A. Yes sir.
Q. Where do you reside?
A. East 228 Mission, Spokane.
Q. Washington?
A. Spokane, Washington.
Q. How long have you resided in Spokane?
A. Thirty-four years.
Q. Continuously?
A. Yes sir.
Q. Do you know Mr. Roche the plaintiff?
A. Yes sir.
Q. How long have you known him?
A. Oh, thirty years or more, over thirty years.
Q. During that time has he been a continuous resident of this city?
A. Yes sir.
Q. Did you ever reside in Oregon?
A. No sir.
Q. In the year 1924 did you reside in Oregon?
A. No sir, I was down there temporarily for a short time.
Q. For what temporary purpose were you there? State the facts.
A. The Modern Irrigation and Land Company with whom I was employed, got an option contract on some land in Marion County, Oregon, and I was down there trying to develop it and sell it.
Q. Did you have any interest in the company?
[fol. 17] A. No sir, except I was secretary; had one share in my name.
Q. You were employed by the company?
A. I was employed by the company on a salary.
Q. How long were you there, off and on, about how much of the time?
A. Oh, for about a year and a half I was there close to

half the time, for nearly a year and a half, for about seventeen months I was there about half the time.

Q. During that time where was your home and residence?

A. East 228 Mission.

Q. Where you resided for many years?

A. For twenty-seven years.

Q. And your family was here?

A. Yes sir.

Q. And when you were down there did you have any home or just board some place?

A. No, I boarded at a house there, on West Dayton; paid $9.00 board and lodging.

* * * * * * *

[fol. 18] John H. Roche, the plaintiff, called in his own behalf in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Girard:

Q. Mr. Roche, when you brought this suit in Oregon state to the court whether or not you had any information as to Mr. McDonald owning or holding any real estate or other property in the State of Oregon?

A. I had. By inquiring around I understood that he was doing business down there, had an interest in a 1,000 acres of land or more and of course he probably had it in somebody else's name, but he had been there for a great number of months, and they had a very large project, and Mr. Houchens specially told me that he and McDonald were working together, and they expected to make a big thing down there and they had a contract with the Steele Company of Portland, and when they got through they expected to make a very good thing out of it on the sale of that property, when they had it properly irrigated and so on, and very fine business chances, so I went down there for the purpose of suing McDonald there and catching his interest down there in that state if I possibly could.

Q. Mr. Roche, they charge you with bad faith in bringing that suit?

Mr. Graves: Nobody said anything charging him with bad faith at all.

The Court: It is suggested in the brief.

Mr. Graves: It isn't bad faith in any sense except that a man is charged with the actual, inevitable consequences of his conduct, that is all.

Mr. Girand: Will you admit then——

Mr. Graves: He was not acting in any vicious manner or [fol. 19] from any motive except a motive as result of necessity from his own conduct, that is all.

Mr. Girand: If that is all we can strike that out.

Cross examination.

By Mr. Graves:

Q. Mr. Roche, you got your judgment down there on the 1st day of October, 1924?

A. I think that is what the record shows.

Q. That is what you allege in your complaint. Will you also verify it?

Mr. Girand: Yes, that is the date without any doubt.

A. Yes, I think that is the date.

Mr. Graves: You got your judgment in the Circuit Court of the State of Oregon for the County of Marion against Mr. McDonald, the judgment you sue on in this case, on the 1st day of October, 1924, did you?

A. Yes.

Q. On the 25th day of that month you sued on that judgment in this court, did you not?

A. Yes.

Q. Between the 1st day of October when you got that judgment and the 25th day of October when you sued on it here, beyond having a certified copy of it sent to you, what did you do towards enforcing it?

A. We brought this action, and it has been here in court until——

Q. No, you misunderstand me. I say between the 1st day of October——

A. Enforcing it down there?

Q. Now, listen to the question please and then you will [fol. 20] understand. Between the first day of October, 1924, when you procured this judgment now in suit and the 25th of the same month when you sued on it in this court, what did you do with it besides having it certified up here?

Mr. Girand: I object to that for the reason that it does not tend to prove any issue in this case and second, the judgment in Oregon is still alive.

The Court: He can answer.

A. I understood Mr. McDonald had left over there and he was here again and I just concluded to bring my suit here and catch what I could catch here.

Q. I assume that is what you thought.

A. And also what I have over there.

Q. Now, don't make any speech, Mr. Roche. Remember you are a witness. Now, prior to suing there, you had known D. K. McDonald a great many years, hadn't you?

A. I had known him for a long time.

Mr. Girand: I object to that as improper cross examination.

The Court: I don't know what the purpose is.

Mr. Graves: Just preliminary.

Mr. Girand: Go ahead.

Mr. Graves:

Q. And you say you understood he had left down there and came back up here?

A. Yes, sir.

Q. Just a minute, now, Mr. Roche. Had you made any inquiry before bringing that suit down there as to whether he had abandoned his home here, whether he was not living here, in the place in which he had lived for a great many years?

A. I was not interested in that point. I was interested in the fact that he had property down there and had a big [fol. 21] enterprise and I was going to try to catch him down there if I could.

Q. Now then, you were not interested in whether he lived down there or not, you say?

A. Well, he was living down there, but whether he had moved, what you call his domicile down there and had left Spokane entirely, I didn't care, but I knew he had been down there for sixteen or seventeen months, more or less.

Q. What I was getting ready to ask you was you remarked a while ago that you immediately brought that judgment up here and sued on it here because you understood he had moved from there here?

A. That he had come up here, yes sir.

Q. So as a matter of fact you got a judgment on the first of October and sued it up here on the 25th and that is all you ever did with it, isn't it?

A. Yes, he left down there and I thought I would catch him up here again.

Q. And incidentally of course you understood that you would have a live judgment up here instead of a dead one?

A. That is it now.

Q. And your real purpose was to get rid of a dead judgment from Oregon and transmit it into a live one?

A. No, I intended to catch some property down there, down in Oregon, besides I was informed also that he really was not living with his wife and that he was separate and apart and he was down there and doing business down there, but I didn't inquire whether he had really left Spokane entirely or not, but I wanted to catch him down there if I could and get something. I didn't expect $18,000, but get something.

[fol. 22] Q. Then you wanted to get a live judgment here on the Oregon judgment, if you could, that was your main object, wasn't it?

A. No, No.

Q. One of your objects, wasn't it?

A. First object to get what I could, and I didn't think of this other up here at the time. I was only thinking to just grab him down there and get something on my judgment.

Q. And then get a live judgment up here?

A. It was alive here then.

Q. On the first of October?

A. No, it wasn't the first of October, but it was when it was down there.

Q. But when you took your judgment you knew it was dead up here?

A. I guess the record shows that, yes.

Q. That is what you knew?

A. I don't know. I didn't pay any attention to that. I suppose if I looked it up I would know right quick that it was.

Q. You are a lawyer?

A. But it wasn't dead in Oregon for two years more.

Q. Pardon me, you are a lawyer?

A. You bet.

Q. I don't want you to bet. You know you are?

A. Yes.

Q. You have been practicing in this city and state for a good many years?

A. I have been thirty years, Mr. Graves.

Mr. Biraud: I object because it is not proper cross examination.

[fol. 23] The Court: Overruled.

(Witness excused.)

[fol. 24] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 25] In Supreme Court of Washington

No. 19340, Department One

John H. Roche, Appellant,

v.

D. K. McDonald, Respondent

Opinion—Filed October 16, 1925

The plaintiff, Roche, commenced this action in the superior court for Spokane county seeking recovery from the defendant, McDonald, upon a judgment rendered by the circuit court of the state of Oregon for Marion county, which judgment was rendered by that court upon a judgment rendered by the superior court of this state for Spokane county. A hearing upon the merits resulted in

judgment denying to the plaintiff the relief prayed for, from which he has appealed to this court.

The conceded and proven controlling facts, in so far as we need here notice them, may be summarized as follows: Appellant and respondent have both been residents of Spokane county for a period of more than thirty years past. In the year 1917 one Dart commenced an action in the superior court for Spokane county seeking recovery of damages from respondent and others. Such proceedings were had therein that on June 24, 1918, judgment was rendered by that court in favor of Dart and against respondent and his co-defendants, awarding recovery in the sum of $12,75[illegible]. No action seeking revival of or recovery upon that judgment in any court has ever been taken other than the Oregon suit herein question, and we assume that no part of the obligation so evidenced has ever been paid. On February 27, 1924, Dart duly assigned that judgment, and all sums due thereon, to appellant. On March 15, 1924, [fol. 26] appellant commenced an action in the circuit court of Oregon, for Marion county, seeking recovery on that judgment. At that time appellant was temporarily in Oregon where he was personally served with summons in that action, so as to give that court jurisdiction over his person and the controversy, in so far as the facts pleaded in the complaint might authorize the rendering of a judgment against him. The record before us is not very certain as to just what respondent did in the way of appearing in that action. It is conceded, however, by statements made in appellant's brief filed upon this appeal, that he did nothing more than demur to the complaint soon after the commencement of the action, which demurrer was by the court overruled, evidently before the expiration of a period of six years following the rendering of the judgment of the Washington court, and that thereafter he made no further response to the complaint and elected not to plead further. Thereafter on October 1, 1924, the Oregon court rendered judgment in that action in favor of appellant and against respondent in the sum of $18,28[illegible], evidently the amount of the Washington judgment, with interest from the time of its rendition. It is alleged in respondent's affirmative defense in this action, and not denied in appellant's reply thereto, that "there was no other foundation for the Ore-

gon judgment sued upon herein than the judgment rendered by the Washington court on June 24, 1918." Thus we are led to conclude that the judgment of the Oregon court was rendered against respondent solely upon the judgment of the Washington court because of respondent's failure to answer upon the merits.

In view of our principal problem being as to whether or not the Oregon judgment was a judgment within the power of the Oregon court to render at the time of its purported rendition, let us first inquire and decide as to whether or not that judgment was anything more than a mere default [fol. 27] judgment having for its support only the allegations of the complaint upon which it was rendered. It has, we think, been made plain by our above summary of the facts that the complaint in that action did not set up the semblance of a cause of action, other than the judgment of the Washington court; that there was no answer controverting the facts alleged in the complaint in that action; and that the judgment of the Oregon court was rendered solely upon the judgment of the Washington court for want of answer to the merits on the part of respondent in that action. There was no trial in the Oregon court participated in by respondent, and hence no possible trial amendments to the complaint. Therefore, the judgment of the Oregon court here sued upon was a default judgment, as completely so as if respondent had not appeared in the action and demurred to the complaint. 34 C. J. 147.

It has become the settled law of this state, and we think generally elsewhere in this country, that a judgment rendered by default, rested solely upon the allegations of a complaint so deficient in substance as to conclusively negative the existence of a cause of action at the time of its rendition, is void, or in any event voidable, and that such a judgment may be successfully assailed collaterally or otherwise, whenever it is sought to be made the foundation of a claim of right.

> State ex rel. First Nat. Bank v. Hastings, 120 Wash. 283, 207 Pac. 23.

Does it appear in this case that the judgment of the Washington court, which was the sole foundation of the judgment of the Oregon court, was, at the time of the rendering of the judgment of the Oregon court, no longer of any force and

effect? We think it affirmatively clearly so appears by the [fol. 28] allegations of the complaint in the Oregon case, in that it thereby appears that the judgment of the Washington court was rendered on June 24, 1918, and that the judgment of the Oregon court was rendered thereon more than six years thereafter. In Chapter 29, Laws of 1917, relating to the duration of judgments, referring to sections of Remington and Ballinger's Code, we read:

"[469. After the expiration of six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of the judgment debtor.

"[468. No suit, action, or other proceedings shall ever be had on any judgment rendered in the state of Washington by which the lien or duration of such judgment, claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment."

This statute, we think, is not a mere statute of limitation affecting a remedy only. It is more than that. It not only makes a judgment cease to be a "charge against the person or estate of the judgment debtor" after six years from the rendering of the judgment, but also in terms expressly takes away all right of renewal of or action upon the judgment looking to the continuation of its duration or that of the demand on which it rests, for a longer period than six years from the date of its rendition. It does not tell us when an action upon a judgment may be commenced. It simply tells us that no judgment can be rendered extending the period of duration of a judgment or of the claim or demand upon which it rests beyond the period of six years following its rendition. We have given full force and effect to this statute. Burman v. Douglas, 78 Wash. 204, 139 Pac. 41; Ball v. Bussell, 119 Wash. 206, 205 Pac. 423. We note that in Burman v. Douglas this statute is referred to as "one of limitation." A critical reading of that decision, however, will show that the question of whether it is an ordinary statute of limitation against the [fol. 29] commencement of an action, or a statute taking away a right of action, was not considered. We think that expression in that decision should not be regarded as of any controlling force in our present inquiry. In Ball v.

Bussell, we held in effect that the statute took away all right of action for recovery upon a judgment in so far as such recovery could be made effectual beyond the period of six years from the rendition of the judgment. In that case, while six years had not expired following the rendition of the judgment at the time of the commencement of the action, six years had expired before the rendition of the judgment in the action thereon. We there said:

"It so happens that the life of the original judgment here in question expressed on March 31, 1921, which, it will be noticed, was only eight days following the entry on March 23, 1921, of the judgment here upon appeal. It follows from our view of the law, as above expressed, that at this time both the original judgment and the judgment which is here upon appeal must be held to be no longer a charge against the person or estate of appellant. If six years following the entry of the original judgment had not at this time expired, we would remand the case to the superior court with directions to embody in the judgment here on appeal appropriate language specifically limiting its life to the same period as that of the life of the original judgment, to wit, six years following March 31, 1915; which period would end March 31, 1921. But, there not being at this time any necessity for such a direction, we simply conclude that the judgment appealed from must now be held to be of no force or effect following March 31, 1921, and that to that extent it should be set aside and held for naught."

We conclude that had appellant sued in a superior court of this state upon the judgment rendered in the superior court for Spokane county, of this state, and recovered judgment thereon as he did in the Oregon court more than six years following the rendition of the original judgment, and such recovery had been by default as it was in the Oregon court, we would now unhesitatingly hold such judgment to be void and of no effect.

Now shall the judgment rendered by the Oregon court upon the original judgment rendered by the Washington [fol. 20] court be held of greater force when in turn sued upon in this state than a judgment rendered by a Washington court upon an original judgment rendered by a Wash

ington court; that is, shall the courts of Washington accord to this judgment rendered by the Oregon court any greater force or effect than the courts of Washington would accord to such a judgment rendered by a Washington court? Since, as we have observed, we would hold such a judgment of our own court void and of no effect, why should we not hold such a judgment of the Oregon court void and of no effect? Counsel for appellant invoke the provision of Section 1, Art. 4, of the Federal Constitution, that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." The argument seems to be that we are to blindly accept the judgment of the Oregon court wholly at its apparent face value, it being a simple money judgment, without inquiry or taking notice of the foundation upon which it rests. Thus counsel would have us ignore the allegations of the complaint in that action, which affirmatively show that there could be no lawful recovery therein at the time of the rendition of the judgment of the Oregon court, in that the judgment of the Washington court was rendered more than six years prior thereto.

Manifestly, the mandate of the federal constitution that full faith and credit shall be given in each state to "judicial proceedings" of a sister states does not mean that there can be accorded to such proceedings legal force and effect which they do not possess. Now when the Oregon court rendered its default judgment upon the judgment of the Washington court, it evidently did so without proof of the peculiar judgment law of Washington, and was thus induced to erroneously accord to the judgment of the Washington court greater force and effect than that judgment possessed under [fol. 31] the laws of Washington. That judgment, as we have seen, was the sole foundation upon which the Oregon judgment was rendered, and that being a default judgment, it was, therefore, (in any event as we may now view it in this action thereon in this state, we being enabled to take judicial notice of the Washington judgment law without proof,) void and of no binding force as a support of another judgment thereon in this state. In Public Works v. Columbia College, 17 Wall. (U. S.) 521, Justice Fields, speaking for the supreme court of the United States, said:

"No greater effect can be given to any judgment of a court of one State in another State than is given to it in the State where rendered. Any other rule would contravene the policy of the provisions of the Constitution and laws of the United States on that subject."

In Reynolds v. Stockton, 140 U. S. 254, Justice Brewer, speaking for that court, also observed:

"The section of the Federal Constitution which is invoked by plaintiffs is section 1 of Article IV, which provides that 'full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.' Under that section the full faith and credit demanded is only that faith and credit which the judicial proceedings had in the other State in and of themselves require."

In Suydam v. Barber, 18 N. Y. 468, Chief Judge Johnson, speaking for the court after a somewhat exhaustive review of prior decisions, said:

"While the rule just stated as to the effect of judgments of one State in the courts of another is clear, as is established by the cases cited by Judge Cowen, and by numerous others, yet no case can be found where a greater effect is given to the judgment of any State in the courts of another than belongs to it in the State where it was rendered. Indeed, such a rule would be against all reason, and not only out of the policy of the provisions of the constitution and laws of the United States on that subject, but against and irreconcilable with all policy and with the plainest and fundamental principles of justice."

This pertinent observation, we think, can be as safely made today as in 1858 at the time of the rendering of that decision.

34 Cyc., 1128.

As to what relief, if any, respondent McDonald might have [fol. 32] as against the Oregon judgment, were it sought to be enforced in Oregon or sued upon in some state other than Washington, we express no opinion. It is enough for our present purpose to know by the record of the Oregon

case, as disclosed by this record, that that judgment was a default judgment; that its sole foundation was a judgment of the Washington court rendered more than six years prior thereto; and to judicially know that the Washington judgment, according to the law under which it was rendered, furnished no legal foundation for the rendering of the Oregon judgment, because of the absolute nullity of the Washington judgment by the then lapse of time. Under these circumstances we hold that the courts of this state in any event are not bound to give full faith and credit to the Oregon judgment according to its literal terms, but are privileged and have the duty to view that judgment in the light of the foundation upon which it rests and the judgment law of our own state. Had the peculiar Washington judgment law been appropriately brought to the attention of the Oregon court, it seems to us probable, practically to a degree of certainty, that the Oregon court would never have rendered its default judgment upon the Washington judgment. This, however, is of no legal consequence here.

The judgment of the superior court denying to appellant Roche the relief prayed for by him is affirmed.

Parker, J.

We concur: Tolman, C. J. Askren, J. Mackintosh, J.

[fol. 33] In Supreme Court of Washington

[Title omitted]

Judgment—November 30, 1925

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Spokane County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 30th day of November, A. D. 1926, on motion of Graves, Kizer & Graves, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed with costs; the petition for rehearing denied and that the said D. K. McDonald have

and recover of and from the said John H. Roche and from American Surety Company surety the costs of this action taxed and allowed at Eighty Nine & 40/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 34] In Supreme Court of Washington

[Title omitted]

Petition for Writ of Error—Filed January 25, 1926

To the Honorable Warren W. Tolman, Chief Justice of the Supreme Court of the State of Washington:

Your petitioner, John H. Roche, the appellant above-named feeling himself aggrieved by the final judgment rendered against him in this cause on the 30th day of November, 1925, respectfully asks that a writ of error issue from the United States Supreme Court to the Supreme Court of the State of Washington.

The matters to which the petitioner's grievance refers are specified in the assignments of error accompanying this petition.

It is further requested that the order allowing the writ of error fix the amount of a supersedeas and cost bond.

Dated at the City of Spokane, Washington, the 23rd day of January, 1926.

B. C. Mosby, Attorney for Petitioner.

[File endorsement omitted.]

[fol. 35] [File endorsement omitted]

In Supreme Court of Washington

[Title omitted]

Assignments of Error—Filed January 25, 1926

Now comes John H. Roche, the plaintiff petitioner for a writ of error in the above entitled cause and, in connec-

tion with his petition, shows that in the record herein—particularly in the final judgment of the Supreme Court of the State of Washington—there have occurred material errors to his prejudice, namely:

First. The court erred in its determination that sections 459 and 460 of Remington's Compiled Statutes of Washington, limiting the lien and duration of judgments to six years, which statutes were pleaded in the defendant's answer and invoked in his brief to controvert the claims of the plaintiff—were valid and operative so that they precluded the right of the plaintiff to recover on the judgment in suit, rendered in his favor in the State of Oregon on the 1st day of October, 1924, upon a judgment entered in the Superior Court of Spokane County, State of Washington, on the 24th day of June, 1918. Because the protection afforded to the plaintiff, under the Constitution of the United States, Article IV, Section 1, was by such determination rendered nugatory.

Second. The court erred in its denial of Plaintiff's right, under the Constitution of the United States, Article *Article* [fol. 36] IV, Section 1—which right was set up in his reply, argued in the briefs of both parties, and adjudicated in the Washington Supreme Court's written decision—to have his judgment, recovered on the 1st day of October, 1924, in the Circuit Court of the State of Oregon for the County of Marion, accorded full faith and credit in the courts of the State of Washington.

On account of which errors the plaintiff prays that the judgment of the Supreme Court of the State of Washington, herein rendered, may be reversed and that the said tribunal be directed to enter a judgment in his favor, conformably to the prayer of his complaint.

B. C. Mosby, Attorney for Petitioner and Plaintiff in Error.

[fol. 37] IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed January 25, 1926

On reading the Petition of John H. Roche, above-named plaintiff, for a writ of error and, his assignments of error and upon due consideration of the record of this cause;

It is ordered, That a writ of Error be allowed from the Supreme Court of the United States to the Supreme Court of the State of Washington, as prayed for in the said petition and, that a writ of error and citation thereon be issued, served, and returned to the Supreme Court of the United States in accordance with law, upon condition that the said petitioner and plaintiff in error, John H. Roche, give a cost and supersedeas bond—to be approved by me as Chief Justice—in the sum of One Thousand Dollars, that he shall prosecute the said writ of error to effect and, if he fail to make his plea good, then that he shall answer to the defendant in error, D. K. McDonald, for all costs and damages that may be adjudged on account of the issuance of such writ.

In witness whereof, I have hereunto set my hand this 25th day of January, 1926.

Warren W. Tolman, Chief Justice of the State of Washington.

[File endorsement omitted.]

[fols. 38 & 39] Bond on writ of error for $1,000, approved and filed February 1, 1926, omitted in printing.

[fol. 40] In Supreme Court of Washington

[Title omitted]

Affidavit of Service of Praecipe—Filed March 9, 1926

State of Washington,
County of Spokane, ss:

I, Flora Sears, being first duly sworn, say that: I am an American citizen over twenty-one years of age; and that on the 8th day of March, 1926, in the City and County of Spokane, State of Washington, I served the attached praecipe for record upon D. K. McDonald, defendant in error in the above-entitled action by delivering to and leaving with the said McDonald a true copy of the said praecipe.

Flora Sears.

Subscribed and sworn to before me this 8th day of March, 1926. J. Webster Hancox, Notary Public in and for the State of Washington, residing at Spokane, Wash. (Seal.)

[File endorsement omitted.]

[fol. 41] In Supreme Court of Washington

[Title omitted]

Praecipe for Transcript of Record

To the Clerk of the Supreme Court of the State of Washington, Olympia, Washington:

You will please prepare and certify the following material parts of the record in the above-entitled cause, for the use of the Supreme Court of the United States, namely:

1. Complaint.
2. Answer.
3. Reply.
4. Findings of fact and Conclusions of Law.
5. Exceptions to Findings and Conclusions.
6. Judgment of the trial court.

7. Statement of facts, embracing only the Direct Examination of the Defendant and the Direct and Cross-Examination of John H. Roche as shown on pages 23 to 27 inclusive.

8. Certificate of the Clerk of the Superior Court of Spokane County.

9. Opinion rendered by the Supreme Court of the State of Washington.

10. Judgment of the Supreme Court.

11. Petition for Writ of Error.

12. Assignments of Error.

13. Bond with Chief Justice's approval.

14. Writ of Error.

15. Citation in Error with proof of service.

16. Praecipe for Transcript of record with proof of service.

17. Clerk's Certificate.

Dated this 6th day of March, 1926.

B. C. Mosby, Attorney for Plaintiff in Error.

Service of a copy of the foregoing praecipe is hereby acknowledged this — day of March, 1926. —— ——, Attorneys for Defendant in Error.

[fol. 42] [File endorsement omitted]

In Supreme Court of Washington

Writ of Error—Filed February 6, 1926

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Washington, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said

suit between John H. Roche and D. K. McDonald, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said John H. Roche as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same at Washington, [fols. 43 & 44] on the seventh day of April, A. D. 1926, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the said Supreme Court, the 6th day of February, in the year of our Lord one thousand nine hundred and twenty-six.

Ed M. Lakin, Clerk of the District Court of the United States for the Western District of Washington, by Price Huggins, Deputy. (Seal of the United States District Court, Western District of Washington.)

[fols. 45 & 46] Citation, in usual form, showing service on D. K. McDonald, filed March 9, 1926, omitted in printing.

[fol. 47] Clerk's certificate to foregoing transcript and return to writ omitted in printing.

[fol. 48] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation by Plaintiff in Error of Parts of the Record to be Printed, with Affidavit of Service—Filed April 12, 1926

State of Washington,
County of Spokane, ss:

I, Flora Sears, first being duly sworn, say that: I am an American citizen over the age of twenty one years; and that on the 6th. day of April, 1926, in the City and County of Spokane, State of Washington, I served the attached "Statement of Points" and "Designations for Printing" upon D. K. McDonald, the defendant in error in the above entitled action, by delivering to, and leaving with, the said McDonald a true copy of the said Statement and a true copy of the said Designations.

Flora Sears.

Subscribed and sworn to before me this 6th day of April, 1926. W. C. Losey, Notary Public in and for the State of Washington, Residing at Spokane, Wash. (Seal of W. C. Losey, Notary Public, State of Washington.)

[fol. 49] Designations for Printing

To the Clerk of the Supreme Court of the United States:

For the consideration of the points upon which the plaintiff in error relies, the following parts of the record are regarded as necessary, namely:

1. Complaint.
2. Answer.
3. Reply.
4. Findings of Fact and Conclusions of Law.
5. Exceptions to Findings and Conclusions.
6. Judgment of the trial court.

7. Statement of Facts, embracing only the Direct Examination of the Defendant and the Direct and Cross-Examination of John H. Roche as shown on pages 23 to 27 inclusive.

8. Certificate of the Clerk of the Superior Court of Spokane County.

9. Opinion rendered by the Supreme Court of the State of Washington.

10. Judgment of the Supreme Court.

11. Petition for Writ of Error.

12. Assignments of Error.

13. Bond with Chief-Justice's approval.

14. Writ of error.

15. Citation in Error with proof of service.

16. Praecipe for transcript of record with proof of service.

17. Clerk's certificate.

Dated the 6th day of April, 1926.

B. C. Mosby, Attorney for Plaintiff in Error.

[fol. 50] Statement of Points

On the hearing of this cause the plaintiff in error will rely upon the following points:

First. Section 460 of Remington's Compiled Statutes of Washington—which limits the lien and duration of judgments rendered in the State of Washington to six years—is invalid when construed, as was done by the supreme court of this state in the present case, so as to impair the force and effect of a judgment rendered in another state of the Union. Such a construction is forbidden by the Constitution of the United States, Article IV, Section 1.

Second. Section 460 of Remington's Compiled Statutes of Washington, if valid, is not to be interpreted so that it would preclude the right of the plaintiff to recover on the judgment in suit. For the reason that such interpretation would violate the protection afforded to the plaintiff under the Constitution of the United States, Article IV, Section 1.

Third. Section 459 of Remington's Compiled Statutes of Washington—which declares that "after the expiration of

six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of the judgment debtor''—has no application to the cause at bar. [fol. 51] Because the Oregon judgment, upon which the plaintiff brought suit in the State of Washington, was rendered within less than a year prior to the commencement of the Washington suit. If that section was a factor in the Washington supreme Court's decision denying to the plaintiff the right of recovery against the defendant in error, then such denial constituted an unlawful deprivation of plaintiff's property and contravened the ''due process of law'' provision of Section I, Article XIV of the Amendments to the Constitution of the United States.

Fourth. Under the Constitution of the United States, Article IV, Section I, the plaintiff has a right to have his judgment—recovered on the 1st day of October, 1924, in the Circuit Court of the State of Oregon for the County of Marion—accorded full faith and credit in the courts of the State of Washington.

B. C. Mosly, Attorney for Plaintiff in Error.

[fol. 52] [File endorsement omitted.]

Endorsed on cover: File No. 31,801. Washington Supreme Court. Term No. 326. John H. Roche, plaintiff in error, vs. D. K. McDonald. Filed March 29th, 1926. File No. 31,801.

(31,801)

Supreme Court of the United States

OCTOBER TERM 1926

No. 326

JOHN H. ROCHE, PLAINTIFF IN ERROR,

vs.

D. K. McDONALD

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

SUBJECT INDEX OF THE MATTER IN THE BRIEF.

That full faith and credit was not given by the Supreme Court of Washington to the Oregon Judgment. See pages ..... 3, 4, 6, 7 and 8

That Section 460, Remington's Compiled Statutes of Washington, has no application to foreign judgments. See pages ..... 10 and 11

The Statute of Limitations of Oregon governed in a suit on a Washington judgment brought in the Oregon Court. Pages ..... 9 and 10

The Oregon Judgment sued on in this cause can not be collaterally attacked when the defendant was personally served in the suit in Oregon. See pages ..... 8 and 9

That the judgment of the Supreme Court of Washington contravened the "due process of law," provision of Section 1, Article 14, of the Amendments to the Constitution of the United States. Pages ..... 3 and 4

TABLE OF THE CASES.

Article 4, Section 1, Constitution United States.
Article 14, Section 1, Constitution United States.
Ann. Cas. 1913 D. 1292.
Ann. Cas. 18-1103.
Aurora vs. West, 7 Wall 82.
Burnham v. Douglas, 78 Wash. 394.
Chambers v. Baltimore O. R. Co., 207 U. S. 142-148.
Chinn v. Foster Milburn Co., 132 U. S. 107.
Christmas v. Russell, 5th. Wall. 290.
Converse v. Hamilton, 224 U. S. 243.
Cromwell vs. Sac County, 94 U. S. 351.
Fauntleroy v. Lum, 210 U. S. 230.
General Oil Co. v. Crain, 209 U. S. 211, 216, 220, 228.
Harju vs. Anderson, 133 Wash. 506.
International Text BookCo. v. Pigg, 217 U. S. 91.
Keyser v. Lowell, 54 C. C. A. 574. .117 Fed. 400
Murray vs. Murray, 6 Ore. 17.
M. Elmoyle, Etc. vs. John J. Cohen Etc., 38 U. S. 310.
Oregon Statutes—Olson's Law Code, Chapter 2, Section 5, Sub-division 1.
Remington's Compiled Statutes of Washington, Sections 459 and 460.

The judgment sought to be reviewed in this court is reported in 136 Washington Reports, pages 322 to 331 inclusive.

The grounds upon which the jurisdiction of this court is invoked is that full faith and credit was not given to the Oregon judgment when suit was brought upon it in the courts of Washington. Article 4, Section 1, of the Constitution of the United States. The date of said judgment in the Supreme Court of Washington is the 30th day of November, 1925. Transcript of Record, pages 23 and 24.

That the judgment of the Supreme Court of Wash-

ington contravened "due process of law," provision of Section 1, Article 14, of the Amendments to the Constitution of the United States.

The Plaintiff in error claimed in the lower Court and in the Supreme Court of the State of Washington as the basis of this Court's jurisdiction that full faith and credit was not given to the Oregon judgment sued on. Pages 1 and 2, and 7 and 8, Transcript of Record.

The ruling of the Supreme Court of Washington denied full faith and credit to the Oregon Judgment sued on. Pages 23 and 24. Transcript of Record.

Fauntleroy v. Lum, 210 U. S. 320.

Converse v. Hamilton, 224 U. S. 243.

Christmas v Russell, 5 Wall. 290.

International Text Book Co. v. Pigg, 217 U. S. 91. 18 Ann. Cas. 1103.

General Oil Co. v. Crain, 209 U. S. 211.

Kenney, Etc. v. Supreme Lodge of the World, Loyal Order of Moose, 252 U. S. 411.

County of Scotland in the State of Missouri, Plff. in Error v. William Hill, 132 U. S. 107.

STATEMENT OF THE CASE.

This action was commenced by the Plaintiff in error against D. K. McDonald in the Superior Court of the State of Washington, and County of Spokane. The action was to recover upon a judgment rendered in the Circuit Court of the State of Oregon, for the County of Marion, on the 1st day of October, 1924. See Transcript of Record, pages one (1), and two (2).

The Answer admits that the Court last above referred to had jurisdiction of the person of the defendant, D. K. McDonald. See Transcript of Record, pages 2, 3, 4 and 5. The Defendant, D. K. McDonald, in this case filed an Affirmative Defense. None of the allegations contained in the Affirmative Defense are pertinent to the issues in this cause and are no defense

whatever to the Complaint of Plaintiff. See Transcript of Record, pages 2, 3, 4 and 5.

Plaintiff in error filed a Reply to the Affirmative Defense of the defendant, D. K. McDonald, denying the material allegations (if any there were) of the Affirmative matter set up in defendants Answer.

A trial was had of the above cause in the Superior Court of the State of Washington for Spokane County, which trial resulted in a judgment for the defendant, D. K. McDonald. See Transcript of Record, page ten (10).

The plaintiff in the last named case appealed from said judgment to the Supreme Court of the State of Washington. On the 30th day of October, 1925, the Supreme Court of Washington affirmed the judgment of the Spokane County Court. See Transcript of Record, pages 16, 17, 18, 19, 20, 21, 22, 23 and 24.

On January 25, 1926, the plaintiff in error filed a Petition in the Supreme Court of Washington asking that a Writ of Error issue from the United States Supreme Court to the Supreme Court of the State of Washington. See Transcript of Record, page 24.

Plaintiff in error filed in the Supreme Court of Washington, Assignments of Error on January 25, 1926. See Transcript of Record, pages 24 and 25. The Writ was granted on January 25, 1926. See Transcript of Record, page 26. The Writ of Error was filed in the Supreme Court of Washington, February 6, 1926. A sufficient bond was given.

The Plaintiff in error designated the points upon which the plaintiff relies certain portions of the record, which the plaintiff in error regarded as necessary. See Transcript of Record, pages 30 and 31.

The Plaintiff in error made a statement of points upon which he would rely on the hearing of this cause. See Transcript of Record, pages 31 and 32.

Specification of Assigned Errors Intended to Be Urged.

First. The court erred in its determination that sections 459 and 460 of Remington's Compiled Statutes of Washington, limiting the lien and duration of judgments to six years—which statutes were pleaded in the defendant's answer and invoked in his brief to controvert the claims of the plaintiff—were valid and operative so that they precluded the right of the plaintiff to recover on the judgment in suit, rendered in his favor in the State of Oregon on the 1st day of October, 1924, upon a judgment entered in the Superior Court of Spokane County, State of Washington, on the 24th day of June, 1918. Because the protection afforded to the plaintiff, under the Constitution of the United States, Article IV, Section 1 was by such determination rendered nugatory.

Second. The court erred in its denial of Plaintiff's right, under the Constitution of the United States, Article IV., Section 1—which right was set up in his reply, argued in the briefs, of both parties, and adjudicated in the Washington Supreme Court's written decision—to have his judgment, recovered on the 1st day of October, 1924, in the Circuit Court of the State of Oregon for the County of Marion, accorded full faith and credit in the courts of the State of Washington.

ARGUMENT.

It is the contention of plaintiff in error that sections 459 and 460 of Remington's Compiled Statutes of Washington, as construed by the Supreme Court of the State of Washington, denied full faith and credit to the Oregon judgment sued upon. See the case of Thomas P. Kenney, administrator of the Estate of Donald Kenney, Petitioner and Plff. in err.,

v. Supreme Lodge of the World, Loyal Order of Moose, 252 U. S. 411. In this case this court used the following language: "In Fauntleroy v. Lum, 210 U. S. 230, it was held that the courts of Mississippi were bound to enforce a judgment rendered in Missouri upon a cause of action arising in Mississippi, and ILLEGAL and VOID there." The policy of Mississippi was more actively contravened in that case than the policy of Illinois is in this. Therefore, the fact that here the original cause of action could not have been maintained in Illinois is not an answer to a suit upon the judgment. See Christmas v. Russell, 5 Wall. 290, Converse v. Hamilton, 224 U. S. 243. Ann. Cas. 1913 D, 1292. But this being true, it is plain that a state can not escape its constitutional obligations by the simple devise of denying jurisdiction in such cases to Courts, otherwise competent. The assumption that it could not do so was the basis of the decision in International Text Book Co. v. Pigg, Y 217 U. S. 91. 18 Ann. Cas. 1103, and the same principal was foreshadowed in General Oil Co. v. Crain 209, U. S. 211, 216, 220, 228 and in Fauntleroy v. Lum, 210 U. S. 230, 235, 236, see Keyser v. Lowell 54 C. C. A. 574, 117 Fed. 400; Chambers v. Baltimore O. R. Co. 207 U. S. 142, 148, and cases cited. Whether the Illinois statute should be construed as the Mississippi act was construed in Fauntleroy v. Lum, was for the Supreme Court of the State to decide; but read as that Court read it, it attempted to achieve a result that the Constitution of the United States forbade."

The statutes of Washington, that the Supreme Court of Washington held, were valid statutes, and applied to judgments of a sister state when sued upon in Washington, are as follows: Sections 459 and 460, of Remington's Compiled Statutes of Washington: Section 459 reads as follows: "After the expiration

of six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of a judgment debtor."

Section 460 is as follows: "No suit, action or other proceedings shall ever be had, on any judgment rendered in the STATE OF WASHINGTON by which lien or duration of such judgment claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment."

These statutes, if valid, are not to be interpreted so that it would preclude the right of the plaintiff to recover on the judgment in suit for the reason that such interpretation would violate the protection afforded to the plaintiff under the Constitution of the United States, Article 4, Section 1.

The case of County of Scotland in the State of Missouri Pltff. in err. v. William Hill, 132 U. S., page 107, holds that: "An adjudication in a State court which binds the plaintiff, whether it is right or wrong, concludes him until it has been reversed or set aside. It can not be disregarded any more in the courts of the United States than those of the State."

It seems clear that the Supreme Court of the State of Washington denied full faith and credit to the Oregon judgment sued on in this case. D. K. McDonald, in his answer admitted that the Oregon Court had jurisdiction of his person but denied that it had jurisdiction of the subject matter. See Transcript of Record, page 2.

The Oregon judgment sued on in this case can not be collaterally attacked. The doctrine, that a foreign judgment can be attacked for want of jurisdiction of the person or subject matter does not apply when the judgment is rendered on personal service or the defendant has appeared. The defendant, McDonald,

was personally served in the Oregon suit. He can not in this cause attack a judgment rendered in the Oregon Court collaterally. Chin v. Foster Milburn Co., 195 Fed. 159.

The Statute of Limitations of Oregon govern in this cause. The Statute of Limitations of Oregon that has bearing on this case is as follows: "Olson's Law Code 1920, Chapter 2, subject—limitations of actions, section 5, sub-division 1; 'An action upon a judgment or decree of any court of the United States or of any State or territory within the United States.'", must be commenced within ten years.

In Federal Statutes—annotated—Volume 9—sub-division D—page 153 on the subject of Limitations, we find the following: "That the effect intended to be given under our constitution to judgments is, that they are conclusive only as regards the merits"; the common-law principle that applies to suits upon them, ~~that~~ they must be brought within the period prescribed by the local law, Lex Fori or the suit will be barred. Christmas v. Russell, 5th Wallace 301, and Keyser v. Lowell, C. C. A. 117 Fed. 400; see also case of Wm. M-Elmoyle for the use of Isaac S. Bailey v. John J. Cohen, administrator of Levi Florence, 38 U. S. 310.

This case holds that, the plea of the Statute of Limitations in an action instituted in one State on a judgment obtained in another State, is a plea to the remedy; and consequently the Lex Fori must prevail in such a suit. The foundation of the Oregon judgment was a judgment obtained in the Superior Court of the State of Washington for Spokane County against D. K. McDonald. The Statute of Limitations of Oregon applied to this judgment. The Statute of Limitations of Washington had ~~then~~ it been pleaded in the

Oregon suit would not have prevailed for the reason that the Lex Fori would control.

It seems plain that full faith and credit was not given the Oregon judgment when sued upon in the Superior Court of the State of Washington for Spokane County and that, that court was in error in not giving full faith and credit to said Oregon judgment and the Supreme Court of the State of Washington was in error when it affirmed the judgment of the Superior Court of Spokane County.

The law seems to be plain that the Statute of Limitations of Oregon, which limits the time for bringing actions upon judgments or decrees of any court of the United States or any State or territory within the United States to ten years, is the Statute of Limitations to be applied to the Washington judgment, when sued on, in the State of Oregon.

In Washington a suit can not be brought upon a judgment rendered in the State of Washington after the expiration of six years from the rendition of said judgment. Notwithstanding this statute it has no application to a suit upon a Washington judgment when sued upon in the State of Oregon. A suit upon a Washington judgment may be maintained in the State of Oregon after the Statute of Limitations of Washington has barred the judgment in Washington; the statute of limitations only effecting the remedy.

We call the Court's attention to the fact that suit was commenced in the Circuit Court of the State of Oregon in and for the County of Marion on the judgment rendered in the State of Washington against D. K. McDonald, long prior to the time that said judgment was barred in Washington, by the Washington Statutes of Limitations. Pages 3 and 4, Transcript of Record.

The Supreme Court of Washington in the case of

Brunham v. Douglas, 78 Wash., page 394, decided that Section 460 Supra. clearly does not apply to suits on foreign judgments. The suit in this case is based on a foreign judgment.

There was no jurisdiction in this last named case over some of the defendants, therefore, when that judgment was sued on in another State the other State did not have to give said judgment full faith and credit as to the defendants not served.

The Supreme Court of Washington endeavors to sustain its opinion by the cases of—Public Works v. Columbia College, 17 Wallace 521.

In the case at Bar there was jurisdiction over the person of the defendant and of the subject matter of the suit.

The other case cited by the Supreme Court of Washington to sustain its decision, is Henry F. Reynolds et al, plfs. in err. vs. Robert F. Stockton, 140 U. S. 254. In the last case cited, other and different relief from that asked in the complaint, was granted. Of course, this judgment was void in the State where rendered, therefore, it could not be given full faith and credit when sued on in another state.

The last cases cited by the Supreme Court of the State of Washington are no authority to sustain its decision. The cases are authority for the plaintiff in error.

McDonald, the defendant in error, filed a demurrer in the open court, which was overruled. He made no further response to the complaint and elected not to plead further.

If the defendant McDonald had any defense to the Washington judgment when sued on in the state of Oregon the law required that he present such defense in the Oregon court. Failing to make such defense the

judgment of the Oregon court is res adjudicata, when suit is brought in the state of Washington on the Oregon judgment.

He made no further appearance, and elected not to plead further. See Transcript of Record, p. 17.

We respectfully submit that the judgment of the Supreme Court of the State of Washington be reversed and that the said court be directed to enter judgment for the plaintiff in error in this cause.

LUCIUS G. NASH,
Spokane, Wash.

F. W. GIRAND,
(Of Counsel).

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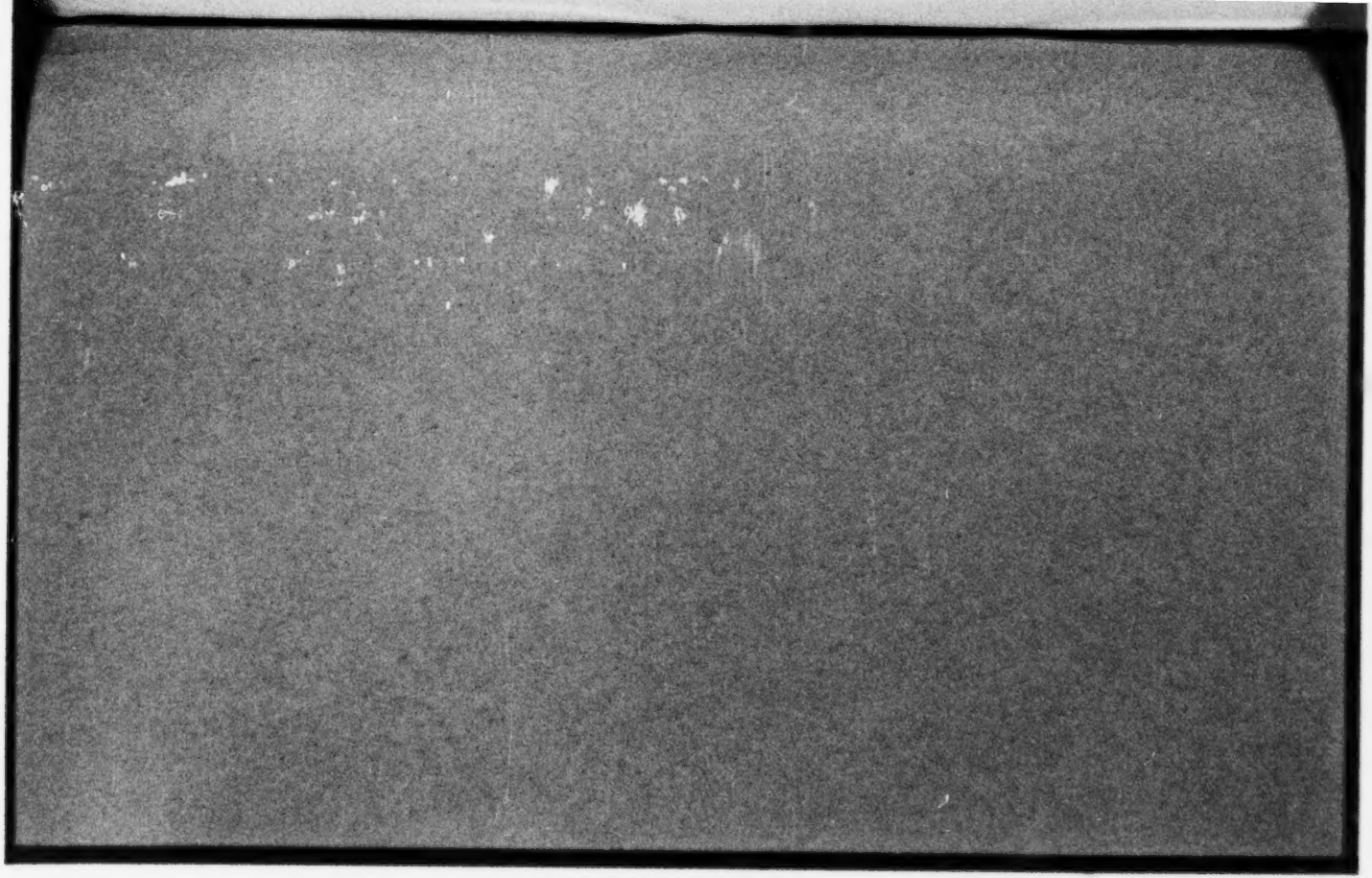

(31,801)

Reply Brief of Plaintiff in Error.

Supreme Court of the United States

OCTOBER TERM 1926

No. 326

JOHN H. ROCHE, PLANTIFF-IN-ERROR

vs.

D. K. McDONALD

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

SUBJECT INDEX OF MATTER IN THE BRIEF.

Additional Statement of McDonald immaterial 3

No Evidence of fraud on the part of Roche.. 4, 6, 7

Section 460 1, Rem. Compiled Statutes, 1922, does not apply to judgments of sister states,. 5, 6

Judgment by default is as binding as judgment rendered upon a trial, 7, 8, 9

Finding 6 No. has no support in the evidence.... 6

TABLE OF CASES

American Express Co. vs. Mullins, 212 U. S. 309-14.
Andrews vs. Andrews, 188 U. S. 14.
Board of Public Works vs. Columbia College, 17 Wall 521.
Burman vs. Douglas, 78 Wash. 395.
Crowley vs. Baumgartner, 114 Wash. 195.
Fauntleroy vs. Lum, 210 U. S. 230.
Hoover vs. New York R. Co., 244 U. S. 212.
Harju, respondent, vs. Wm. Anderson et al, 133 Wash. 506.
Harris vs. Balk, 198 U. S. 315.
Hilton vs. Guyot, 159 U. S. 113.
Last Chance Mining Co. vs. Tyler Mining Co., 157 U. S. 683.
Reynolds vs. Stockston, 140 U. S. 254.
U. S. ex rel Harshman vs. County Court, 122 U. S. 306
Remington's Compiled Statutes, 1922, 460.

There is little to be noticed in the brief of McDonald.

McDonald's brief on page two contains this statement: "The statement of the case made in the brief for Roche gives no information concerning the nature of the controversy involved, so we submit a complete statement." The statement made by plaintiff in error is certainly clear to a man of ordinary understanding. Counsel for McDonald entertains the opinion that because McDonald lived in Washington for thirty (30) years that service of process upon him in Oregon while he was temporarily within that state did not give the Oregon court jurisdiction over his per-

son. We respectfully submit that counsel is wrong about this.

It is beyond our comprehension how the fact of McDonald's residence for more than a quarter of a century in Washington could affect the validity of a judgment rendered in Oregon upon personal service of process on McDonald. It is also non-understandable by us how the fact that McDonald had no property in Oregon could affect the validity of the judgment rendered in the Oregon court against McDonald. This seems to be all of the additional statement of the case made by McDonald.

There is no evidence to support the finding of the Superior Court in the State of Washington that the sole purpose of Roche in suing upon the Oregon judgment was to evade the Washington statute relating to the duration of judgments.

This court will determine for itself whether there is anything in the record which shows any evidence supporting any such finding.

Harris vs. Balk, 198 U. S. 215.

American Express Co. vs. A. R. Mullins, 212 U. S. 309-14.

In any event the public policy of the State of Washington was not contravened by Roche bringing action on the Oregon judgment.

The purported additional statement of the case made by McDonald is found on pages 2, 3 and 4, of his brief.

At page five (5), McDonald's brief is the following:

> "The Oregon court was without jurisdiction to render the judgment in suit. Under the laws

> of Washington, a judgment rendered by this court ceases to exist at the expiration of six years from its rendition, and any judgment rendered on it after that time is void."

The statute referred to in McDonald's brief is as follows:

> "No suit, action or other proceedings shall ever be had on any judgment rendered in the State of Washington by which the lien, or duration of such judgment, claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the original judgment." Remington's Compiled Statutes, 1922, 460.

This statute clearly refers only to judgments rendered in the STATE OF WASHINGTON.

In the case of *Burman vs. Douglas*, 78 Wash. 395, the last paragraph is as follows: "Counsel for the appellants contends that this case comes within the rule in the case of *Lilly-Brackett Co. vs. Sonneman*, 50 Wash. 487. That was an action upon a *foreign judgment* and was brought well within the six years; even if this statute may be held to apply to *foreign judgments, which it clearly does not*, this case is not controlled by that case nor by the more recent case of *Catton v. Rechling*, Ante. page 187."

This action is not brought upon a Washington judgment; it is brought upon a judgment of a sister state, to-wit: A judgment of the State of Oregon. The above statute upon which McDonald places such great reliance to defeat the plaintiff in error has no application.

In our opening brief we cited a number of opinions

in this court holding that a judgment of a sister state cannot be attacked collaterally when sued on in another state. In addition we cite the case of *U. S. vs. California and O. Land Co.*, 1-2 U. S. 355: "A judgment is conclusive as to all the media concludendi; and it needs no authority to show that it cannot be impeached either in or out of the state by showing it was based upon a mistake of law."

McDonald asserts that the Oregon judgment is fraudulent. The record does not disclose the semblance of any fraud on the part of Roche in securing the Oregon judgment. A foreign judgment will be assumed to have been rendered in a court of competent jurisdiction upon regular proceedings after due notice and to be untainted with fraud. *Hilton vs. Guyot*, 159 U. S. 113.

Finding Number 6, made by the Trial Court is as follows:

> "Whatever plaintiff's purpose may have been in suing in the State of Oregon and taking the judgment, the course pursued by him since, is consistent only with the purpose and intention of evading the statute of this state upon the life of a judgment and of obtaining an extension for another six years of the judgment rendered in this court against the defendant." See transcript of record, page 9.

There is nothing in this finding that in any manner impughn's the motive of Roche in bringing the suit on the Washington judgment in Oregon. Whatever his conduct may have been after obtaining the judgment does not show that Roche obtained the

judgment for the purpose of evading the statutes of this state. The purported finding of the court set out above is not a finding but at best, is a conjecture and a conclusion. This finding or conclusion has no support in the evidence adduced upon the trial. See Transcript of Record, pages 12, 13, 14, 15 and 16.

McDonald in his brief says that the Oregon judgment was rendered by default. It is admitted that McDonald appeared in the action; that he demurred to the complaint; that his demurrer was over-ruled; that judgment was thereafter rendered against him. The judgment rendered in Oregon against McDonald is not purely a default judgment. Even if it be classed as a default judgment it is just as binding on him as if the judgment had been rendered upon a trial.

In *U. S. Ex. Rel. Harshman vs. County Court*, 122 U. S. 306, it is held: a judgment is not less conclusive because rendered by default; also in case of *Last Chance Mining Co. vs. Tyler Mining Co.*, 157 U. S. 683, it is held: a judgment by default is just as conclusive an adjudication between the parties of whatever is essential to support the judgment as when rendered after answer and contest.

In the case of *Philbrick vs. O'Connor*, 15 Ore. page 15, it is held that:

> "Judgment by default, after service of Summons and Complaint, and failure to answer admits the truth of every material allegation in the Complaint."

McDonald's demurrer in the Oregon court admitted all of the allegations of the complaint in the Oregon suit on the Washington judgment. It ad-

mitted that the Washington judgment was a valid, unsatisfied and subsisting judgment. It was the duty of McDonald, if he had any defense to the Washington judgment when sued on in the State of Oregon, *to present such defense in the Oregon court;* failing to make such defense the judgment of the Oregon court is *res judicata* when suit is brought in the State of Washington on the Oregon judgment.

See *Crowley vs. Baumgartner,* 114 Wash., at page 195:

> "The Idaho court was one of general jurisdiction. It had jurisdiction of the parties and of the subject matter, and after it had found against the defendant and entered its solemn judgment to that effect, the courts of this state, under the full faith and credit clause of the Federal Constitution, may not permit the defendant to again try the case on its merits nor permit the wife or anyone else in his behalf to urge again the defenses which had been foreclosed by the judgment of the Idaho court."

See also *Harju, respondent vs. Wm. Anderson, et al., defendants, Elinor W. Anderson, Appellant,* 133 Washington 506:

> "The Circuit Court of Clatsop County had jurisdiction of the persons and of the subject matter of the litigation before it. It had jurisdiction by personal service upon the appellant and it had jurisdiction under the law to entertain a suit for judgment upon a judgment already obtained in another jurisdiction, and in such a suit the judgment debtor had a right to interpose as a defense against that action, the fact that the foreign judgment upon which the suit was being prosecuted was void for the reason

that no service of Summons and Complaint in the original action had been made. This is the law, both of this state and of Oregon. Murray vs. Murray, 6 Oregon 17; Aultman Miller & Co. vs. Mills, 9 Wash. 68. He having a right to interpose that defense a judgment in that action would be res judicata as to it if it was in issue. It was proper for the respondent in the Oregon case to include in his answer, as he did, if there had been no service of Summons and Complaint in the action begun in Washington. The Oregon Court allowed that defense to stand in the pleading. It was therefore an issue in that action and the determination of the action determined that issue. It is true that respondent did not appear at the trial, but that does not render any less binding upon him the judgment of the Circuit Court of Clatsop County afterwards affirmed by the Supreme Court of Oregon. That judgment was res judicata as to all things which were, or could have been, litigated in that proceeding under the pleading. The question of whether or not there had been service in Wahkiakum County in the Washington action was a matter which was an issue in that case, and the judgment in that case determined that there had been service and is binding upon parties to that litigation who are the two parties to the litigation before us."

The judgment rendered in the Oregon Court against Anderson was held to be res judicata notwithstanding the fact that Anderson was never served and had no notice of the suit brought against him in Cowlitz County, Washington.

The Supreme Court of Washington endeavors to sustain its opinion by the case of *Public Works vs. Columbia College*, 17 Wallace 521.

There was no jurisdiction in this last named case

over some of the defendants, therefore, when that judgment was sued on in another state the other state did not have to give said judgment full faith and credit as to the defendants not served. In this case McDonald was served; he also appeared in the action. The other case cited by the Supreme Court of Washington to sustain its decision, is *Henry F. Reynolds et al, Plaintiff in Error vs. Robt. F. Stockton*, 14 U. S. 254.

In the last cited case, other and different relief from that asked in the Complaint was granted. Of course, this judgment was void in the state where rendered, therefore it could not be given full faith and credit when sued on in another state.

The above cases cited by the Supreme Court of the State of Washington are no authority to sustain its decision.

McDonald in his brief at page 29 cites the case of *Andrews vs. Andrews*, 188 U. S. 14. The court of South Dakota that rendered its decree of divorce to Charles S. Andrews was without jurisdiction for the reason the plaintiff had not acquired a bona fide domicile within said state. This case in no manner aids McDonald.

In the case at bar there was jurisdiction of the person of McDonald and the subject matter of the suit.

At page 7 of McDonald's brief it is stated that the original Washington judgment was rendered in an action Ex Delicto. This is true, however, whenever

a cause of action, in the language of the law, transit in rem judicatam, and the judgment thereupon remains in full force unreversed, the original cause of action is merged and gone forever. *Hamer vs. New York R. Co.*, 244 U. S. 272.

McDonald, at page 41 of his brief says: "However, among the decisions cited in the brief there are three which may seem, at least superficially, to be to some extent analogous to the present case. These cases are direct and positive authority, which, if followed by this court will necessitate a reversal of this case. Especially, this is true, of the case of *Fauntleroy vs. Lum*, 210 U. S. 230. This case has been reaffirmed by this court a great number of times.

We respectfuliy ask that this cause be reversed and that the plaintiff in error be granted such relief to which he is entitled.

LUCIUS G. NASH,

Spokane, Washington.

F. W. GIRAND, of Counsel,

Spokane, Washington.

SUBJECT INDEX

SUBJECT	Page
Foreword	1
Statement of the Case	2
Summary of Argument	5
Want of Jurisdiction of Oregon Court	7
Judgment Not Enforceable in Oregon, Hence Not Enforceable in Washington	22
Oregon Judgment Fraudulent	27
Washington May Compel Its Citizens to Respect Its Laws	29
Argument in Roche's Brief	40

TABLE OF CASES

Case	Page
Andrews v. Andrews, 188 U. S., 14	29
Andrews v. Andrews, 188 U. S., 14	30
Baker v. Stonebreaker, 36 Mo., 338	21
Ball v. Bussell, 119 Wash., 206	8
Ball v. Bussell, 119 Wash., 206	24
Bettman v. Cowley, 19 Wash., 207	8
Beveridge v. Hewitt, 6 Ill. App., 467	27
Bibend v. Kreutz, 20 Cal., 110	27
Binkley v. Switzer, 192 Pac., 500	20
Black, Judgments, §§84, 93	17
Black, Judgments, §867	23
Black, Judgments, §979	23
Black, Judgments, §§365, 366	23
Board of Public Works v. Columbia College, 17 Wall., 521	13
Brown v. Parker, 28 Wis., 1	21
Brown v. Parker, 28 Wis., 1	38
Bucki Lbr. Co. v. Atlantic Lbr. Co. 116 Fed. 1	27
Burman v. Douglas, 78 Wash., 394	8
Burman v. Douglas, 78 Wash., 394	24
Carpenter v. Dexter, 8 Wall., 513	13
Carrington v. Holabird, 17 Conn., 530	26
Central Vermont Ry. v. White, 238 U. S., 507	10
Christmas v. Russell, 5 Wall., 290	41
Cole v. Cunningham, 133 U. S., 107	28
Cole v. Cunningham, 133 U. S., 107	37
33 Corpus Juris, p. 1064, §21	8
34 Corpus Juris, pp. 1105-6, §1570	23
34 Corpus Juris, p. 1090, §1542	23
34 Corpus Juris, p. 444, §608	23
Cuba R. R. v. Crosby, 222 U. S., 473	9
Davis v. Mills, 194 U. S., 451	10
Dehon v. Foster, 4 Allen, 545	29
Dehon v. Foster, 4 Allen, 545	35

Case.	Page
Dennis v. R. R. Co., 49 S. E., 869	12
Fauntleroy v. Lum, 210 U. S., 230	43
Finn v. U. S., 123 U. S., 227	10
Freeland v. Williams, 131 U. S., 405	7
Gile v. Wood, 32 Idaho, 752	20
Gordon v. Munn, 106 Pac., 286	38
Hanley v. Donaghue, 116 U. S., 1	22
Harrisburg, In re, 119 U. S., 199	10
Hawkins v. Ireland, 67 N. W., 73	38
Hazen v. Lyndonville Bank, 41 Atl., 1046	28
Hazen v. Lyndonville Bank, 41 Atl., 1046	37
Hazen v. Lyndonville Bank, 41 Atl., 1046	38
Humphreys v. Leggett, 9 How., 296	23
Humphreys v. Leggett, 9 How., 296	27
Jeffrey v. Moran, 101 U. S., 285	7
Jones v. Kincaid, 5 Lea, 677	27
Joslin v. Coffin, 6 Miss., 539	27
Kansas City So. Ry. v. Wolf, 261 U. S., 133	10
Kenney v. Supreme Lodge, 252 U. S., 411	45
Kesler v. Kern, 28 N. E., 726	39
Keyser v. Rice, 47 Md., 203	28
Keyser v. Rice, 47 Md., 203	37
Levine v. Levine, 187 Pac., 609	23
Louisiana v. New Orleans, 109 U. S., 285	7
Louisville Cement Co. v. Int. Com. Comm., 246 U. S., 638	11
McElmoyle v. Cohen, 13 Pet., 311	22
Main v. Field, 40 N. E., 1103	39
Margarum v. Moon, 53 Atl., 179	37
Marshall v. Holmes, 141 U. S., 589	23
Mayor etc. v. Kelly, 55 So., 526	18
Metcalf v. Williams, 104 U. S., 93	23
Metcalf v. Williams, 104 U. S., 93	27
Miller v. Gittings, 37 Atl., 372	28
Miller v. Gittings, 37 Atl., 372	37
Morley v. Lake Shore Ry., 146 U. S., 162	7

Case.	Page
Moton v. Hull, 13 S. W., 849	37
National Exchange Bank v. Wiley, 195 U. S., 257	14
National Surety Co. v. State Bank, 120 Fed., 593	24
O'Haire v. Burns, 101 Pac., 755	38
O'Reilley v. R. R. Co., 17 Atl., 906	12
Osborne v. Ry. Co., 88 Atl., 512	12
Palmer v. Labaree, 23 Wash., 409	8
Pender v. Machine Co., 87 Atl., 1	12
Phillips v. Grand T. Ry., 236 U. S., 662	10
Reynolds v. Stockton, 140 U. S., 254	18
Robertson v. Pickrell, 109 U. S., 608	13
Rolling Mill Co. v. Ore. Co., 152 U. S., 596	23
Remington's Comp. Stat. 1922	8
Roche v. McDonald, 136 Wash., 322	5
Roche v. McDonald, 136 Wash., 322	9
Sandage v. Studebaker, 41 N. E., 380	37
Scott v. Ellery, 142 U. S., 381	25
Slater v. Mexican Ry., 194 U. S., 120	9
Singer Mfg. Co. v. Fleming, 58 N. W., 226	39
Snook v. Snetzer, 25 Ohio St., 516	37
State etc. v. Hastings, 120 Wash., 283	17
Sullivan St. Bank v. First Nat. Bank, 146 N. E., 403	7
Sweeney v. Hunter, 22 Atl., 653	37
Teager v. Landsley, 27 N. W., 739	37
Thompson v. Whitman, 18 Wall., 457	14
Thompson v. Whitman, 18 Wall., 457	21
U. S. ex rel Rauch v. Davis, 8 Fed. (2), 907	11
Von Bermuth v. Von Bermuth, 73 Atl., 1049	38
Washington Laws 1897, p. 52	8
Weaver v. Alabama Ry., 76 So., 364	37
Wells Fargo v. Taylor, 254 U. S., 175	23
Wierse v. Thomas, 59 S. E., 58	28
Wierse v. Thomas, 59 S. E., 58	37
William Danzer Co. v. Gulf R. R., 268 U. S., 633	10
Williams Estate, In re, 107 N. W., 608	38
W. U. Tel. Co. v. Brown, 234 U. S., 542	9

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1926
No. 326

JOHN H. ROCHE, Plaintiff in Error,

vs.

D. K. McDONALD

In Error to the Supreme Court of the State of Washington

BRIEF FOR McDONALD

Foreword.

Review of a decision of the highest court of the State of Washington is sought, and for that purpose the case is brought here by writ of error. The re-

view is sought upon the sole ground that the Washington court denied full faith and credit to a judgment of an Oregon court. The case, therefore, should have been brought here by certiorari. But under §237 (c) of the Judicial Code it appears to be the duty of the Court in such a case to examine the record in order to determine whether certiorari ought to be granted, and as such an examination will necessarily require a consideration of the merits of the case, we merely suggest that the case is not properly here and turn to a discussion of the merits.

The parties will be referred to by their surnames.

Statement of the Case.

The statement of the case made in the brief for Roche gives no information concerning the nature of the controversy involved, so we submit a complete statement.

A statute of the State of Washington, in effect since 1897, limits the life of a judgment to six years, and forbids its extension beyond that period. June 24, 1918, a judgment in an action *ex delicto* was recovered against McDonald in the Superior Court of the State of Washington for Spokane County. Four months before the expiration of the judgment it was assigned to Roche, who is a citizen of the State of Washington, and an attorney who has resided and been engaged in the practice of his profession in Spokane County for more than thirty years. McDonald is also a citizen of the State of Washington, and for

more than thirty years has resided in Spokane County. In a short time after the assignment of the judgment to Roche, he began an action upon it in an Oregon court, and process therein was served upon McDonald while he was temporarily in Oregon. While there is no evidence bearing upon the subject, it was admitted in the State courts that McDonald appeared generally in that cause and demurred to the complaint. His demurrer being overruled, he appeared no further therein. October 1, 1924, more than six years after the rendition of the Washington judgment, the Oregon court rendered judgment upon it as by default against McDonald. McDonald had no property in Oregon, and no attempt was made to enforce the Oregon judgment there, but directly after its rendition Roche began an action—the case at bar—upon it in the Superior Court of the State of Washington for Spokane County. That was the first attempt made to enforce in the State of Washington the original judgment, that of June 24, 1918. McDonald, served with process, answered the complaint, alleging substantially the matters heretofore stated, and averring particularly that Roche knew that he (McDonald) had for more than thirty years been a citizen and resident of Spokane County, Washington, and that he had neither residence nor property in Oregon; that Roche knew that he could not, and did not attempt to, enforce the Oregon judgment in that State, his sole purpose in suing upon the Washington judgment in Oregon being to evade the Washington statute relating to the duration of judgments. The Superior

Court found the facts substantially as stated above, save as to Roche's purpose in suing on the Washington judgment in Oregon. On that subject it found that while Roche claimed that some general, indefinite information had been communicated to him that McDonald owned property in Oregon, he (Roche) did not pursue the subject further before or after bringing suit and obtaining judgment there, and took no steps to enforce the judgment there, doing nothing with the Oregon judgment beyond suing upon it in Washington; that whatever his purpose may have been, the course pursued by him was only consistent with a purpose to evade the laws of Washington relating to the life of judgments. Upon those findings, judgment was rendered dismissing the action. The findings were accepted by the Supreme Court of Washington, the highest court of the State. It affirmed the judgment dismissing the action, holding that at the expiration of six years from its rendition the Washington judgment sued on in Oregon became extinct and ceased to exist as a cause of action; that it is a fundamental principle that a default judgment is void which is unsupported by a pleading stating a cause of action; and that the Oregon judgment was therefore void, since the complaint upon which it was rendered stated no other cause of action than the Washington judgment which had become extinct before the rendition of the judgment thereon. It is this decision of the Supreme Court and the judgment entered thereon which are sought to be reviewed here.

The facts above stated appear from the complaint (Record, pp. 1-2), answer (pp. 2-6), reply pp. 7-8), findings of fact and conclusions of law (pp. 8-9) and the opinion of the Supreme Court (pp. 16-23).

The opinion of the Supreme Court of Washington in this case is reported as *Roche v. McDonald,* 136 Washington, 322.

Summary of the Argument.

First. The Oregon court was without jurisdiction to render the judgment in suit. Under the laws of Washington, a judgment rendered by its courts ceases to exist at the expiration of six years from its rendition, and any judgment rendered on it after that time is void. The Washington law becomes a part of any judgment rendered by its courts, and accompanies such judgment into any jurisdiction where it may be taken. When the judgment in suit was rendered by the Oregon court, the Washington judgment which was its sole foundation had ceased to exist. The Oregon court was without jurisdiction to render judgment on the extinct Washington judgment for two reasons: (1) The Constitution does not permit a State court to give greater effect to a judgment of a court of a sister State than is given to it in the State where it was rendered. (2) The judgment sued on was rendered by default. A default judgment which is not supported by a sufficient cause of action is void. When the Washington judgment expired, before the rendition of the judgment in

suit, no cause of action remained to support the latter judgment.

Second. The judgment in suit could be impeached in the courts of Washington upon any ground which would render it vulnerable in the Oregon courts. Judgment cannot be rendered upon a judgment from the courts of another State which is not virile and enforceable in the State where it was rendered. McDonald could have enjoined enforcement of the judgment in suit in Oregon, and may therefore defend against its enforcement in Washington.

Third. Because the Oregon judgment was procured for the purpose of evading the laws of Washington, it was a fraud upon those laws. Washington could deny to its citizen, Roche, the benefit of his fraud upon the laws to which he owes obedience.

Fourth. Eliminating the question of fraud, in the exercise of a sound public policy a State will not permit its citizens to resort to the courts of another State for the purpose of obtaining advantages to which they are not entitled under the laws of their own State, and depriving fellow citizens of the protection given by those laws.

Fifth. Counsel for Roche misconceive the nature of the questions presented, and the authorities cited by them are inapposite.

I. Want of Jurisdiction in the Oregon Court.

It is admitted that the sole cause of action pleaded by the plaintiff in the Oregon action was the Washington judgment rendered in June, 1918, and that it was the sole foundation for the judgment rendered by the Oregon court (Record, pp. 2-7). The original Washington judgment was rendered in an action *ex delicto*. It follows that the obligation upon which judgment was rendered by the Oregon court was in no sense contractual, but arose solely from and depended for its existence upon the Washington judgment. *Louisiana v. New Orleans*, 109 U. S., 285, *Freeland v. Williams*, 131 U. S., 405, *Morley v. Lake Shore Ry.*, 146 U. S., 162.

Whether there was anything upon which the Oregon court could act, whether there was any cause of action upon which it could render judgment, depended on the laws of the State of Washington. Those laws created courts authorized to render judgments and provided for the rendition of judgments, their incidents and effect. Necessarily, therefore, the existence and extent of the judgment depended on the Washington laws. A judgment "is the creature of statute, owing its life and force entirely to legislation." *Jeffrey v. Moran*, 101 U. S., 285-287.

> "A judgment is purely statutory. Its very existence and the rights of the judgment creditor are and must be measured by the statute creating it. It begins, continues, and terminates at the will of the Legislature."
>
> *Sullivan State Bank v. First National Bank* (Ind.), 146 N. E., 403, 405.

The validity of a judgment, its effect, its very existence, are determined by the statutes in force in the State in which and at the time it was rendered. 33 Corpus Juris, p. 1064, §21 and cited cases.

In providing for the rendition of judgments, the Washington statutes prescribed the term of their existence. So far as concerns the present case, that prescription is as follows:

> "After the expiration of six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of the judgment debtor.
>
> "No suit, action, or other proceedings shall ever be had on any judgment rendered in the State of Washington by which the lien or duration of such judgment, claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment."
>
> Washington Laws 1897, p. 52; 1 Remington's Compiled Statutes 1922, §§459, 460.

It has been uniformly held by the Supreme Court of Washington that this statute is not one of limitations, but affects the life of the judgment, and that after the expiration of six years from its rendition a judgment rendered by a Washington court ceases to exist and can be continued in effect no longer. *Bettman v. Cowley*, 19 Washington, 207, *Burman v. Douglas*, 78 Washington, 394, *Ball v. Bussell*, 119 Washington, 206. In *Palmer v. Labaree*, 23 Washington, 409, it was said (p. 416):

> "The legislative intent expressed in this act not only sought to destroy existing judgments,

but the act was intended to deny any remedy whereby existing judgments could be extended."

In the present case, it was held that the effect of the act is to completely destroy a judgment at the expiration of six years from its rendition, and to forbid any relief thereon or any extension of its life beyond that period by any form of action, proceeding or process. The extinction of a judgment at the end of the statutory period of its life is so utter that a judgment rendered thereon after the expiration of the six-year period would be void and of no effect (Record, pp. 16-23). *Roche v. McDonald*, 136 Washington, 322.

It is fundamental, of course, that when recovery is sought upon a foreign obligation the existence and extent of the obligation must be determined by reference to the foreign law. When the plaintiff bases his case upon the foreign law, the defendant is entitled to the benefit of any limitation upon his liability which is imposed by the foreign law. *Slater v. Mexican National Ry.*, 194 U. S., 120, *Cuba Railroad v. Crosby*, 222 U. S., 473, *Western Union Telegraph Co. v. Brown*, 234 U. S., 542.

It is familiar law that in an action upon an obligation created by a foreign law all that relates to the remedy merely is governed by the *lex fori*. Ordinarily, the limitation upon the time within which an action can be maintained upon a cause of action is determined by the *lex fori*, for ordinarily it pertains to the remedy only. Yet the statute limiting

the time within which an action may be brought may be such as to operate as a limitation of the liability itself, and not affect the remedy alone. When such is the character of the statute, then it is one pertaining to the substance of the liability and not of the remedy, and in such case the *lex loci* and not the *lex fori* controls. *Re Harrisburg*, 119 U. S., 199, *Davis v. Mills*, 194 U. S., 451; *Phillips v. Grand Trunk Ry.*, 236 U. S., 662, *Kansas City So. Ry. v. Wolf*, 261 U. S., 133, *William Danzer Co. v. Gulf Railroad*, 268 U. S., 633. Noting the distinction between matters respecting the remedy which are governed by the law of the forum, and matters affecting the substance of the cause of action, as a statute which not only bars the remedy but destroys the liability, see *Central Vermont Ry. Co. v. White*, 238 U. S., 507, 511.

Under the decisions of the Washington Supreme Court, particularly the decision in the present case which holds that a judgment rendered upon a previous judgment after the expiration of that judgment is void, there can be no doubt that the Washington statute goes to the substance of the right of action, and that in an action upon a judgment the existence of the judgment is a matter essential to the jurisdiction. That is in accordance with the general rule in dealing with a statute which not merely forbids an action upon a particular liability after a stated time, but also destroys the liability. Thus in the case of *Finn v. United States*, 123 U. S., 227, a statute provided that every claim against the United States cognizable by the Court of Claims should be "forever

barred" unless an action was begun within a stated period. It was held that when a claim was barred by failure to begin an action within the stated period it was the duty of the court to dismiss the petition whether the limitation was pleaded or not, inasmuch as the statute made it a condition or qualification of the right to a judgment that the action be begun within the stated period. In *Louisville Cement Co. v. Interstate Commerce Commission,* 246 U. S., 638, 642, this Court considered the provision of the act to regulate commerce which required that all complaints for the recovery of damages should be filed within two years from the time the cause of action accrues and held that such provision "is not a mere statute of limitation, but is jurisdictional—is a limit set to the power of the Commission as distinguished from a rule of law for the guidance of it in reaching its conclusion." In *United States ex rel Rauch v. Davis,* 8 Fed. (2nd), 907, it appeared that an action was brought against the director general of railroads in a New York court after the time fixed by Congress within which such actions could be brought. A judgment was rendered therein, and the director general refusing to make payment thereof, a writ of mandamus was sought in the Supreme Court of the District of Columbia to compel him to pay. In denying the writ, it was held that the limitation of time operated as a condition of liability, and that as the action in which the judgment was rendered was not brought within the prescribed period, the judgment was void and was not entitled to consideration in

any court. Certiorari was denied in this case in 270 U. S., 653.

Stated in another way, the doctrine of the courts is that if under the *lex loci* no right of action was created, or if none there exists, then none exists anywhere, and none can be prosecuted in another jurisdiction. *Osborn v. Grand Trunk Ry.* (Ver.), 88 Atl., 512, 514. The doctrine was thus stated in *Pender v. Machine Co.* (R. I), 87 Atl., 1, 2.

> "If under the lex loci there be a right of action, comity permits it to be prosecuted in another jurisdiction; but if under the lex loci no right of action is created or exists, then it exists nowhere and can be prosecuted in no jurisdiction."

See also *O'Reilley v. Railroad Co.* (R. I.), 17 Atl., 906, *Dennis v. Railroad Co.* (S. C.), 42 S. E., 869.

It follows from the foregoing decisions that the act of the Oregon court in rendering judgment upon a Washington judgment had ceased to exist was in excess of jurisdiction. This appears by either of the following processes of reasoning:

(1) Under the constitutional provision requiring full faith and credit to be given by one State to the judgment of another State, the Oregon court could give no greater effect to the Washington judgment than it was entitled to in the State of Washington.

> "No greater effect can be given to any judgment of a court of one State in another State than is given to it in the State where rendered. Any other rule would contravene the policy of

> the provisions of the Constitution and laws of the United States on that subject."

Public Works v. Columbia College, 17 Wall., 521, 529. To the same effect is *Robertson v. Pickrell,* 109 U. S., 608.

The rule above stated was a limitation upon the jurisdiction of the Oregon court, and when it rendered judgment upon a Washington judgment which, under the laws of that State, had ceased to exist, it exceeded its jurisdiction by giving effect to the Washington judgment when it was not entitled to any effect in Washington.

It may be said that as the Washington law limiting the life of a Washington judgment was not pleaded and proven in the Oregon court, the Oregon court was ignorant of it and justified in assuming that the judgment was in existence when it rendered judgment thereon. It can not be said that the Oregon court was ignorant of the Washington law governing judgments. It was asked to give effect to the Washington laws by enforcing a Washington judgment. Necessarily, it was required to take notice of the Washington laws to the extent of recognizing the judgment. Why was it not also required to take notice of the Washington law which limited the life of the judgment? It was said in *Carpenter v. Dexter,* 8 Wallace, 513, 531, that

> "Where one State recognizes acts done in pursuance of the laws of another State, its courts will take judicial cognizance of those laws so far as it may be necessary to determine the

validity of the acts alleged to be in conformity with them."

However, the Oregon court's ignorance of the Washington law cannot supply a jurisdictional defect. Under the authorities above cited, particularly *Louisville Cement Co. v. Interstate Commerce Commission and United States ex rel Rauch v. Davis*, the limit of life which the Washington law set upon the Washington judgment was jurisdictional and affected the judgment wherever it might be taken. If in fact the Oregon court exceeded its jurisdiction, its ignorance of that fact, indeed, its positive adjudication that it was acting within its jurisdiction, is of no importance. In *Thompson v. Whitman*, 18 Wallace, 457, a sloop was forfeited and sold by order of a New Jersey court for an offense against the laws of that State. The jurisdiction of the court depended upon the commission of the offense and the seizure of the sloop in a particular New Jersey county. The court found that the offense was committed and the sloop seized in that county, and its judgment was based upon those findings. In an action of trespass against the officer making the sale in a New York court, it was held that the plaintiff was entitled to impeach the findings of the New Jersey court and show that the offense and seizure of the sloop did not occur in a county over which the New Jersey court had jurisdiction. In *National Exchange Bank v. Wiley*, 195 U. S., 257, Wiley executed and delivered to the Exchange Bank a note for a large sum of money with a warrant of attorney attached thereto,

authorizing any attorney at law in the United States or elsewhere to confess judgment against him in favor of the *holder* of the note. After the note had become due, an attorney-at-law confessed judgment upon the note against Wiley and in favor of the National Exchange Bank for the amount due thereon, all proceedings thereunder being, on the face of the record, in all respects in accordance with the law of Ohio where the note was executed and the judgment rendered. Suit was thereafter brought upon the Ohio judgment in Nebraska. Wiley set up in defense that at the time the judgment was rendered the National Exchange Bank was not the holder of the note, and that therefore there was no authority under the warrant of attorney executed by him to confess judgment in its favor. It was held that he was entitled to defeat recovery by showing the facts alleged.

It is needless to multiply authorities. The cited cases establish that when, in a suit upon a judgment of a sister State, the jurisdiction of the court rendering the judgment is challenged, the facts establishing want of jurisdiction may be shown notwithstanding any belief or adjudication of the court rendering the judgment to the contrary. Applying the rule to the present case, it is immaterial that the Oregon court believed the Washington judgment was still in existence, and in such belief exercised its jurisdiction by rendering judgment thereon. The *fact* was the essential of jurisdiction, not what the Oregon court mistakenly believed or adjudicated the fact to be.

(2) The Oregon judgment was rendered against

McDonald by default. He appeared in response to process served upon him and demurred to the complaint. His demurrer was overruled, whereupon he appeared no further, and some months later judgment was taken against him by default.

While of no particular pertinence to the theory of the case under discussion, it may be remarked that the demurrer was properly overruled, for, as will be observed under a subsequent head, the Washington statute permitted the maintenance of an action upon a Washington judgment at any time within the six-year period after the rendition of the judgment. The sole prohibition of the statute is upon the extension of the life of the judgment beyond the six-year period by reason of any such action. The Oregon action was begun in March 1924, several months before the expiration of the Washington judgment, and it was consequently maintainable when brought and continued to be so maintainable until the 24th of June 1924, when the six-year period upon its life expired.

Returning to the particular question under discussion, when the Oregon court rendered judgment by default against McDonald, it did so upon a judgment which was extinct, and the fact that it was extinct appeared upon the face of the complaint upon which judgment was rendered wherein was stated the date of the rendition of the Washington judgment (Record, pp. 5-6). There is presented, then, the case of a default judgment rendered upon a pleading which not only stated no cause of action, but also affirmatively showed that under no circumstances could the plain-

tiff recover inasmuch as the obligation upon which he counted for recovery had ceased to exist by operation of the law which created it.

Cardinal principles of the law of judgments are that a default judgment must rest upon a good and sufficient complaint; that if the plaintiff's complaint does not state a cause of action the judgment is unsustainable, and that such a judgment is not aided by presumptions. The record must affirmatively show the existence of every material fact to give the court jurisdiction. 1 Black, Judgments, §§ 84, 93. Therefrom it flows that a default judgment resting upon a complaint which states no cause of action is in excess of jurisdiction, especially when the pleading shows that under no circumstances could the plaintiff recover from defendant upon the obligation counted on.

In *State ex rel First National Bank v. Hastings*, 120 Washington, 283, judgments by default and by consent had been taken against a municipality. The complaints on which these judgments were rendered showed that the obligations counted on were such that under the laws of the State the municipality could not be held liable thereon. A good many years thereafter, the judgment creditors sought writs of mandamus against the officers of the municipality to compel the levying of a tax for payment of the judgments. It was held that the judgments were void because the complaints upon which they were rendered showed that under no circumstances could judgment be rendered thereon. In so holding, it was said:

"We now inquire, Did such a complete failure to show grounds of recovery by the allegations of the complaints upon which these consent and default judgments were entered render the judgments void and of no binding force as against the city? We feel constrained to hold that such was the effect of those wholly defective complaints. It is elementary law that a default judgment cannot award any relief beyond that which the facts alleged in the complaint in the action show the plaintiff legally entitled to. This also means, of course, that if a complaint wholly fails to state facts legally entitling the plaintiff to any recovery, or states facts affirmatively showing that the plaintiff has no right of recovery, as those complaints did, a default judgment rendered thereon is void, just as such a default judgment would be void in so far as it awarded relief beyond what which the allegations of the complaint showed the plaintiff legally entitled to."

A case of similar character is *Mayor, etc., v. Kelly* (Ala.), 55 So., 526.

Reynolds v. Stockton, 140 U. S., 254, involves a similar principle. In that case an action was begun in New York against a New Jersey insurance company, its receiver, and the superintendent of the New York insurance department. The plaintiffs were policyholders in the insurance company, and the purpose of the action was to seize and subject to their claims the securities deposited by the insurance company with the superintendent of the insurance department. The insurance company and its receiver appeared and answered, but participated no further in the case. Judgment was thereafter rendered, subjecting the securities deposited with the insurance department to the

claims of the plaintiffs, and in addition giving a money judgment for a large sum against the insurance company and its receiver. Suit was thereafter brought upon this judgment in the court of New Jersey, and these declined to recognize the validity of the judgment because it exceeded the scope of the pleadings. This Court held that the New Jersey courts were not required to recognize the judgment because it exceeded the relief which was demanded under the complaint. To quote (pp. 265-266):

> "The invalidity of the judgment depends upon the fact that it is in no manner responsive to the issues tendered by the pleadings. This idea underlies all litigation. Its emphatic language is, that a judgment, to be conclusive upon the parties to the litigation, must be responsive to the matters controverted. Nor are we concerned with the question as to the rule which obtains in a case in which, while the matter determined was not, in fact, put in issue by the pleadings, it is apparent from the record that the defeated party was present at the trial and actually litigated that matter. In such a case the proposition so often affirmed, that that is to be considered as done which ought to have been done, may have weight, and the amendment which ought to have been made to conform the pleadings to the evidence may be treated as having been made. Here there was no appearance after the filing of the answer, and no participation in the trial or other proceedings. Whatever may be the rule, where substantial amendments to the complaint are permitted and made, and the defendant responds thereto, or where it appears that he takes actual part in the litigation of the matters determined, the rule is universal that, where he appears and responds only to the complaint as filed, and no amendment is made thereto, the judgment is con-

> clusive only so far as it determines matters which by the pleadings are put in issue. And this rule, which determines the conclusiveness of a judgment rendered in one court of a State, as to all subsequent inquiries in the courts of the same State, enters into and limits the constitutional provision quoted, as to the full faith and credit which must be given in one State to judgments rendered in the courts of another State."

Of similar effect to the foregoing are *Binkley v. Switzer* (Colo.), 192 Pac., 500; *Gile v. Wood*, 32 Idaho, 752.

Notwithstanding the difference in the facts of the two cases, we think the rule in *Reynolds v. Stockton* governs the present case. If a default judgment is void because the relief granted is in excess of that which is demandable under the complaint, by parity of reasoning a default judgment must be void when the complaint upon which it is rendered states no cause of action whatsoever.

It is of course to be borne in mind that rules which might be applicable in a case of a collateral attack upon a judgment in the same court which rendered it are not applicable in an action upon a judgment of a sister State when the jurisdiction of the court rendering the judgment is attacked. Jurisdictional recitals, jurisdictional findings, may not be impeached in the first case while they may be in the second. Therefore it was permissible for McDonald to impeach the implied adjudication of the Oregon court that the judgment it rendered was supported by a cause of action by showing that in truth and in fact there was no

cause of action to sustain it. This is not going so far as was permitted in *Thompson v. Whitman*, by contradiction of the jurisdictional findings of the facts of commission of offense and seizure, and in *National Exchange Bank v. Wiley*, by impeachment of the fact that the bank was the holder of the note upon which judgment was confessed.

To sustain the point here made, we must rely chiefly upon general principles, as we have found no case in the books analogous to the present. *Brown v. Parker*, 28 Wisconsin, 1, is more nearly like it than any other. Two persons executed a promissory note, together with a warrant of attorney for the confession of judgment thereon. The note was executed in Wisconsin, where all the parties resided. The Wisconsin statute limiting the time within which actions might be brought upon promissory notes did not affect the remedy merely, but destroyed the right of action. After the right to sue upon the note had expired in Wisconsin, an action thereon was begun in Illinois, where one of the makers had previously gone to reside, and judgment was entered on the note under the warrant of attorney. Suit was then brought on the judgment in Wisconsin. Mr. Chief Justice Dixon, speaking for the Supreme Court of Wisconsin, held that when the note and warrant of attorney died in Wisconsin, they died everywhere, and that as the Illinois judgment had no foundation, it was a nullity. See also *Baker v. Stonebreaker*, 36 Missouri, 338. Suit was brought in Missouri upon a judgment rendered in Maryland. By operation of the Maryland law, the

judgment had expired before the Missouri action was brought. It was held that there was no cause of action to sustain the Missouri action.

II. Oregon Courts Would Not Have Enforced Judgment; Hence Washington Courts Need Not.

It is fundamental that the judgment of a court of a sister State is entitled to no greater or other effect than it has in the State where it was rendered. When sued upon in another State it is conclusive "except for such causes as would be sufficient to set aside the judgment in the courts of the State in which it was rendered." *McElmoyle v. Cohen*, 13 Peters, 311, 326. Upon the record in this cause, McDonald could have prevented the enforcement of the judgment in Oregon by injunction, or by an equitable defense to the action if Roche had attempted to enforce it by action.

The Oregon law was not pleaded or proven in this cause, and the Court cannot take judicial notice of it. *Hanley v. Donoghue*, 116 U. S., 1. It must therefore be presumed either that it is the same as that of Washington, or that it is that which prevails generally in the United States, as evidenced by the preponderance of opinion of the courts. It is immaterial which alternative is adopted.

The authorities are agreed upon the rule that to maintain an action in one State upon a judgment rendered by the courts of another State, it is essential that the judgment should be a valid adjudication, remaining in full force and virtue in the State where

it was rendered, and capable of being there enforced by final process. Though the judgment be merely dormant, suit may not be maintained upon it in another State. 2 Black, Judgments (2d ed.), §867, 34 Corpus Juris, pp. 1105-6, §1570, and cited cases. It seems that Oregon accepts the rule without reservation. *Levine v. Levine* (Ore.), 187 Pac., 609.

Under statutes permitting equitable defenses to be pleaded in actions at law, a suit on a judgment may be defeated by proof of facts showing that it would be against conscience to allow a recovery on the judgment; provided, of course, the defendant could not have availed himself of such facts as a defense to the original action, or has a sufficient excuse for his failure to do so. 2 Black, Judgments (2d ed.), §979, 34 Corpur Juris, p. 1090, §1542. Subject to the same provisos, a court of equity will enjoin the enforcement of an unconscionable judgment. 1 Black, Judgments (2d ed.), §§ 365, 366, 34 Corpus Juris, p. 444, §698. The circumstances which will render a judgment so unjust that its enforcement will not be permitted are illimitable in character and extent. It would seem, however, that when a judgment debtor does not owe the debt evidenced by the judgment, or has a meritorious defense to the cause of action on which it was rendered, its enforcement against him is unjust, and will not be permitted if he was free from fault in not making his defense in the original action. *Humphreys v. Leggett*, 9 How., 293; *Metcalf v. Williams*, 104 U. S., 93; *Marshall v. Holmes*, 141 U. S., 589; *Rolling Mill Co. v. Ore & Steel Co.*, 152 U. S., 596; *Wells Fargo & Co. v. Tay-*

lor, 254 U. S., 175; *National Surety Co. v. State Bank* (C. C. A. 8th Circ.), 120 Fed., 593.

Bearing in mind that the Washington judgment had ceased to exist before the Oregon judgment was rendered on it as a cause of action, and that suit cannot be maintained in the courts of one State upon a judgment rendered by the courts of another State unless the judgment is in full force and effect and capable of enforcement by final process in the State where it was rendered, it is apparent that the courts of Oregon would not have permitted enforcement of the judgment involved had relief been sought there, provided, of course, a sufficient excuse was offered for failure to make defense in the original action.

McDonald's excuse for failing to interpose the facts appearing in the present case as a defense to the Oregon action is the somewhat peculiar character of the Washington laws relating to judgments. Under them, a judgment creditor may sue upon his judgment at any time during its life. However, no judgment rendered in any such suit can have a longer life than the original judgment. So long as the original judgment lives, a second judgment may be rendered on it, but the second judgment dies with the original judgment, be its life a week, a day, or an hour. *Burman v. Douglas*, 78 Washington, 394; *Ball v. Bussell*, 119 Washington, 206. The Oregon action was brought about four months before the death of the Washington judgment. While the Washington judgment lived, the Oregon action could be maintained, and therefore McDonald's

demurrer to the complaint in the Oregon action, which he interposed when he appeared therein, was properly overruled. Not until the death of the Washington judgment could he properly plead the facts appearing in the case at bar, and demand dismissal of the action. But he was obliged to dance attendance upon the Oregon court until the time should arrive when he could make a defense to the action. He was a resident of Washington, and was served with process in the Oregon action while he was temporarily in Oregon. He had the right to assume that nothing would be done in the action which was contrary to law; to assume that if a judgment was taken before the expiration of the Washington judgment, it would be limited to the life of that judgment, and that if no judgment was taken before the Washington judgment expired, the action would be dismissed. No man is bound to presume that his adversary will proceed unlawfully. The case of *Scott v. Ellery*, 142 U. S., 381, is pertinent. Scott, a resident of Iowa, sued Ellery, a resident of New Jersey, in an Iowa court, seeking judgment on a mortgage debt and foreclosure of the mortgage. Ellery appeared and defended. In due course a decree was rendered fixing the amount of the debt, foreclosing the mortgage, and directing sale of the mortgaged premises. At the foot of the decree jurisdiction of the cause was continued, it being provided "that this cause do stand continued until the execution of this decree, and the further order of this court." The mortgaged premises were sold for less than the amount of the mortgage debt, and a judgment for the deficiency was rendered

against Ellery. Before the rendition of the deficiency judgment, Ellery was adjudged a bankrupt and received his discharge in bankruptcy in a bankruptcy court in New Jersey. Scott proved his claim in the bankruptcy proceeding. Ellery had no actual knowledge of the deficiency judgment, and when he learned of it he sued to enjoin its enforcement. It was insisted that the relief sought could not be granted because Ellery had appeared in the cause, the cause had been continued, and therefore he was to be regarded as in court when the deficiency judgment was entered, and to have made no objection thereto. It was held (p. 385) that the bankruptcy proceedings deprived Scott of any right to a deficiency judgment, and that Ellery "was not bound * * to give attention to the suit in Iowa, or to assume that any steps would be taken in the Iowa court that were inconsistent with the statute." Enforcement of the judgment was enjoined.

A case analogous in principle to the foregoing is *Carrington v. Holabird*, 17 Connecticut, 530.

We submit that McDonald had the right to assume that none but a lawful judgment would be taken against him in the Oregon court. His failure to return into Oregon to make a defense after the expiration of the Washington judgment, and the wrongful judgment which in consequence was rendered against him there, were induced by accident, surprise or mistake. His failure to make a defense in the Oregon action was therefore excusable, and as it was, enforcement of the judgment would not be permitted in Ore-

gon. The Washington courts were not required to enforce it if the Oregon courts would not.

While none of the next cited cases is precisely in point, they indicate what is regarded as such accident, surprise, or mistake as will induce the granting of equitable relief against an unjust judgment. *Humphreys v. Leggett*, 9 How., 296; *Metcalf v. Williams*, 104 U. S., 93; *Jones v. Kincaid*, 5 Lea, 677; *Bucki Lumber Co. v. Atlantic Lumber Co.* (C. C. A. 5th Circ.), 116 Fed., 1; *Bibend v. Kreutz*, 20 California, 110; *Joslin v. Coffin*, 6 Mississippi, 539; *Beveridge v. Hewitt*, 8 Illinois Appellate, 467.

III. Oregon Judgment Fraudulent.

In the case at bar, the trial court found that at the time of the trial, and continuously for more than thirty years prior thereto, both Roche and McDonald resided in Spokane County, Washington; that during that entire period Roche knew McDonald, and knew that his residence was in Spokane County; that McDonald had never resided in Oregon or had any property there; that McDonald was served with process in the Oregon action while temporarily in that State; that no step was taken to enforce the Oregon judgment in that State, but it was brought at once into Washington and the present action begun upon it there; and that "the course pursued by him (Roche) is consistent only with the purpose and intention of evading the statute of this State upon the life of a judgment and of obtaining an extension for another six years of the judgment rendered in this court against the defendant (McDon-

ald)." (Record, pp. 8-9.) The findings were adopted by the Supreme Court, and under decisions in analogous cases they establish that Roche's purpose in suing in Oregon and obtaining judgment there was to evade the laws of the State of which he was a citizen, and to deprive a fellow citizen of protection given by its laws. *Wierse v. Thomas* (N. C.), 59 S. E., 58, 59; *Hazen v. Lyndonville Bank* (Vt.), 41 Atl., 1046, 1048; *Keyser v. Rice*, 47 Maryland, 203; *Miller v. Gittings* (Md.), 37 Atl., 372, 374.

When a citizen of a State resorts to the courts of another State for the purpose of evading the laws of his own State, and obtaining an advantage over fellow citizens which is forbidden by those laws, his conduct is fraudulent, and ground for impeachment in the courts of his own State of the proceedings in the foreign courts. In *Cole v. Cunningham*, 133 U. S., 107, the case was this: A citizen of Massachusetts suspended payment. Certain of his creditors, also citizens of Massachusetts, were informed of his suspension, and began actions against him in New York, attaching debts there due him. Subsequently insolvency proceedings were begun in Massachusetts, the purpose of which was to secure an equal distribution of the debtor's property among all his creditors as provided by the laws of Massachusetts. The debtor's assignee obtained an injunction in the Massachusetts courts against the prosecution of the New York action. The case was then brought to this Court under the claim that the judgment of the Massachusetts court was in violation of Article IV, §§1 and 2, of the Constitution.

The Court held that those constitutional provisions did not prevent the impeachment of a judgment or judicial proceedings for "a manifest fraud" (p. 112), and that the injunction was properly issued against the "citizens of Massachusetts, who are seeking to evade the laws of their own State" (p. 134). See also *Dehon v. Foster*, 4 Allen, 545, which was approved and largely quoted from in the cited case.

In *Andrews v. Andrews*, 188 U. S., 14, these facts appeared: Husband and wife were domiciled in Massachusetts. The husband went to South Dakota, took up his residence there, and obtained a decree of divorce for a cause which occurred in Massachusetts, and was not a cause for divorce under its laws. This was forbidden by a Massachusetts statute. Subsequently he returned to Massachusetts, married again, and died there. In probate proceedings it became necessary to determine whether the South Dakota divorce decree was entitled to credit in Massachusetts. The trial court found that the husband "had gone to Dakota for the purpose of obtaining a divorce, in fraud of the law of Massachusetts" (p. 18), and that the divorce was therefore a nullity. The decision was affirmed by the Supreme Judicial Court of Massachusetts, and by this Court.

IV. State of Washington May Compel Its Citizens to Respect Its Laws.

For our final proposition, we submit that the important question in the case is not so much the validity of the Oregon judgment as the power of the State of

Washington over its citizens. Concede, if you please, the intrinsic validity of that judgment. Nevertheless, it was procured by a citizen of the State of Washington for the purpose of evading the laws of his State and to deprive a fellow citizen of a right given by those laws. The constitutional provision that full faith and credit must be given to the judgment of a court of another State does not prevent the State of Washington from defeating the attempt of one of its citizens to evade the operation of its laws through the shallow device of a suit in the courts of Oregon.

As a foundation for the authorities to be hereinafter examined, let us first notice more closely the decision in *Andrews v. Andrews*, 188 U. S., 14. In that case it appeared that a Massachusetts statute provided that if an inhabitant of that Commonwealth should go into another State to obtain a divorce for a cause which accurred in Massachusetts while the parties resided there, or for a cause which would not authorize a divorce by the laws of Massachusetts, the divorce so obtained should be of no force or effect in Massachusetts. Differences arose between husband and wife domiciled in Massachusetts, and thereafter the husband went to South Dakota for the purpose of obtaining a divorce there for a cause which occurred in Massachusetts and which would not authorize a divorce by the laws of that State. He took up his residence in South Dakota and seems to have acquired a *bona fide* residence there, albeit his only purpose in acquiring such a residence was to obtain a divorce for the cause referred to. When permitted by the laws of South Dakota, he

began there a divorce action, serving notice upon his wife, who still remained in Massachusetts, as required by the laws of South Dakota. The wife appeared in the divorce action and filed an answer contesting the husband's right to a divorce. Subsequently, a property settlement was reached, the wife withdrew her appearance, and a decree of divorce was rendered. Thereafter the husband returned into Massachusetts married, and remained there until his death. Upon his death, the first and second wife, each claiming to be the legal widow of the decedent, petitioned to be appointed administratrix of his estate. The courts of Massachusetts, applying the statute heretofore referred to, held that by virtue of it the South Dakota divorce was of no effect in Massachusetts, and therefore that the first wife was entitled to be appointed administratrix. In affirming that decision this Court pointed out the abundant authority of a State over its own citizens, and its right to control them in matters of public policy affecting the interests of the State and its citizens. The powers of government in that respect, it was said, were reserved to the States when the Constitution was adopted, and were not controlled by provisions of the Constitution which, read literally, would seem to prevail over them. It was therefore held to be within the power of the State of Massachusetts to make such regulations respecting the marital relation as it might deem to be for the best interests of the Commonwealth and its citizens, and that if in the course of such regulation it thought fit to provide that a judgment of divorce obtained in another State

should not be effective within the State of Massachusetts, if founded upon a cause occurring in Massachusetts between parties there resident, or which was contrary to its laws, it had the power to so provide, and its power in that respect was not curtailed by the constitutional provision required full faith and credit to be given to the judgments of the courts of another State. To quote (pp. 33-34):

> "The provision of the Constitution of the United States in question is section 1 of article IV, providing that 'Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.' The argument is that, even although the Massachusetts statute but announces a rule of public policy, in a matter purely local, nevertheless it violates this clause of the Constitution. The decree of the court of another State, it is insisted, and not the relation of the parties to the State of Massachusetts and their subjection to its lawful authority, is what the Constitution of the United States considers in requiring the State of Massachusetts to give due faith and credit to the judicial proceedings of the courts of other States. This proposition, however, must rest on the assumption that the Constitution has destroyed those rights of local self-government which it was its purpose to preserve. It, moreover, presupposes that the determination of what powers are reserved and what delegated by the Constitution is to be ascertained by the blind adherence to mere form in disregard of the substance of things. But the settled rule is directly to the contrary. Reasoning from analogy, the unsoundness of the proposition is demonstrated. Thus, in enforcing the clause of the Constitution forbidding a State from impairing the obligations of a contract, it is settled by the decisions of this court, although a State, for adequate consideration, may have executed a contract sane-

tioning the carrying on of a lottery for a stated term, no contract protected from impairment under the Constitution results, because disregarding the mere form and looking at substance, a State may not, by the application of the contract clause of the Constitution, be shorn of an ever inherent authority to preserve the public morals by suppressing lotteries. State v. Mississippi, 101 U. S. 814; Douglas v. Kentucky, 168 U. S. 488. In other words, the doctrine is, that although a particular provisions of the Constitution may seemingly be applicable, its controlling effect is lim ited by the essential nature of the powers of government reserved to the States when the Constitution was adopted."

Further on, it was said (pp. 37-38):

"As the State of Massachusetts had exclusive jurisdiction over its citizens concerning the marriage tie and its dissolution, and consequently the authority to prohibit them from perpetrating a fraud upon the law of their domicil by temporarily sojourning in another State, and there, without acquiring a bona fide domicil, procuring a decree of divorce, it follows that the South Dakota decree relied upon was rendered by a court without jurisdiction, and hence the due faith and credit clause of the Constitution of the United States did not require the enforcement of such decree in the State of Massachusetts against the public policy of that State as expressed in its statutes."

In principle, the case at bar is like the cited case. It may be conceded that the State is more nearly concerned with the marital status and all questions relating thereto than it is with the property rights and liabilities of its citizens. But it cannot be questioned that a State may, as between its citizens, when no con-

tractual obligation is impaired, prescribe upon what terms judgments will be granted, the incidents of judgments, and the term of their existence, and forbid one of its citizens who holds such a judgment from making any other use of it than is permitted by its laws. When the State of Washington granted Roche's assignor judgment against McDonald, it did so on condition that the judgment should have life for six years, and no longer, and that at the end of that time it should become extinct and effect should not be given to it beyond that period in any manner. It is needless to inquire whether the State could, even as to one of its own citizens, forbid him to make use of such a judgment beyond the borders of the State in the event that the courts of another State would grant him permission to use it to effect therein. We are only concerned with the question whether the State of Washington had the power to say that within its own borders one of its citizens should not flout its laws and enforce a judgment which, under those laws, was dead. The question is not one, we submit, of the State of Washington denying effect to the Oregon judgment, but of the State of Washington saying to its citizen, Roche, that he should not make use of a judgment obtained in another State for the purpose of defeating the laws of Washington.

That a State has the power to prevent one of its citizens making use of the courts of another State to defeat the laws to which he is subject is established by an overwhelming preponderance of authority. Perhaps the leading case upon that subject is *Dehon v.*

Foster, 4 Allen, 545. It appeared that a Massachusetts firm became insolvent and a Massachusetts creditor attached in Pennsylvania a debt there owing to the insolvents. At the suit of their assignees, a Massachusetts court enjoined the creditor from prosecuting the attachment proceeding in Pennsylvania. Holding that the injunction was rightfully granted, it was said of the power of the court to enjoin a foreign action (p. 550):

> "The authority of this court as a court of chancery, upon a proper case being made, to restrain persons within its jurisdiction from prosecuting suits either in the courts of this State or of other States or foreign countries, is clear and indisputable. In the exercise of this power, courts of equity proceed, not upon any claim of right to interfere with or control the course of proceedings in other tribunals, or to prevent them from adjudicating on the rights of parties when drawn in controversy and duly presented for their determination. But the jurisdiction is founded on the clear authority vested in courts of equity over persons within the limits of their jurisdiction and amenable to process, to restrain them from doing acts which will work wrong and injury to others, and are therefore contrary to equity and good conscience. As the decree of the court in such cases is pointed solely at the party, and does not extend to the tribunal where the suit or proceeding is pending, it is wholly immaterial that the party is prosecuting his action in the courts of a foreign State or country. If the case stated in the bill is such as to render it the duty of the court to restrain a party from instituting or carrying on proceedings in a court in this State, it is bound in like manner to enjoin him from prosecuting a suit in a foreign court. 2 Story on Eq. §§ 899, 900. Mackiltosh v. Ogilvie, 3 Swanst. 365, n., & 4 T. R. 1093, n. Carron Iron Co. v. Maclaren, 5

H. L. Cas. 416, 445. Maclaren v. Stainton, 16 Beav. 286. Massie v. Watts, 6 Cranch, 158. Briggs v. French, 1 Sumner, 504. Dodson v. Pearce, 4 Duer, 142; S. C. 2 Kernan, 156. All that is necessary to sustain the jurisdiction in such cases is, that the plaintiff should show a clear equity, and that the defendant should be subject to the authority and within the reach of the process of the court."

Of the exercise of the power in the case before the court, it was said (p. 552):

"Now it is clear that the act of the defendants in causing the property of the insolvent debtors to be attached in a foreign jurisdiction tends directly to defeat the operation of this law in its most essential features. It prevents a portion of the property of the debtors from coming to their assignees to be equally distributed among their creditors, and gives a preference to certain of their creditors, by which they will obtain payment of their debt in full. It is therefore an attempt by those creditors, citizens of this state, to defeat the operation of our laws, to the injury of the other creditors of the insolvents. This is manifestly contrary to equity. The defendants, being citizens of this State, are bound by its laws. They cannot be permitted to do any acts to evade or counteract their operation, the effect of which is to deprive other citizens of rights which those laws are intended to secure. Certain it is that they could not in any manner or by any process take from the assignees of an insolvent debtor property belonging to him within this State, and appropriate it to the payment of their debt in full. To prevent such appropriation, if the law furnished no adequate and complete remedy, this court would interfere by suitable process in equity. We are unable to see any reason for withholding such interference, merely because our citizens seek to accomplish the same purpose by resorting to a

foreign jurisdiction, and with the aid of the laws of another State or country. An act which is unlawful and contrary to equity gains no sanction or validity by the mere form or manner in which it is done. It is none the less a violation of our laws, because it is effected through the instrumentality of a process which is lawful in a foreign tribunal. By interposing to prevent it, we do not interfere with the jurisdiction of courts in other States, or control the operation of foreign laws. We only assert and enforce our own authority over persons within our jurisdiction, to prevent them from making use of means by which they seek to countervail and escape the operation of our own laws, in derogation of the rights and to the wrong and injury of our own citizens."

In *Cole v. Cunningham*, 133 U. S., 107, this Court cited and followed the Dehon Case in sustaining the right of a Massachusetts court to enjoin a citizen of Massachusetts from prosecuting an action in New York for the purpose of evading the laws of Massachusetts. In this latter case, the full faith and credit clause of the Federal Constitution was invoked unavailingly by the defendant.

The principle established by the foregoing authorities seems to be accepted in all jurisdictions. *Weaver v. Alabama Ry.* (Ala.), 76 So., 364; *Miller v. Gittings* (Md.), 37 Atl., 372; *Sandage v. Studebaker Bros.* (Ind.), 41 N. E., 380; *Hazen v. Lyndonville Bank* (Vt.), 41 Atl., 1046; *Keyser v. Rice*, 47 Md., 203; *Teager v. Landsley* (Ia.), 27 N. W., 739; *Snook v. Snetzer*, 25 Ohio St., 516; *Wierse v. Thomas* (N. C.), 59 S. E., 58; *Margarum v. Moon* (N. J.), 53 Atl., 179; *Sweeney v. Hunter* (Pa.), 22 Atl., 653; *Moton v. Hull*

(Tex.), 13 S. W., 849; *In re Williams' Estate* (Ia.), 107 N. W., 608; *O'Haire v. Burns* (Col.), 101 Pac., 755; *Gordon v. Munn* (Kan.), 106 Pac., 286; *Von Bermuth v. Von Bermuth* (N. J.), 73 Atl., 1049; *Hawkins v. Ireland* (Minn.), 67 N. W., 73.

In the greater number of the above cited cases, relief was obtained by injunction against the party who was prosecuting in a foreign court an action which he could not have maintained in the courts of his own State, and the proceedings in the foreign court were stayed before judgment was rendered therein. Of course it can make no difference whether relief is sought before or after the rendition of judgment in the foreign court, or whether it is sought by way of injunction or as an equitable defense; at least under the Washington practice, where all distinctions in form between law and equity are abolished, and equitable defenses may be interposed in an action at law. That seems to be everywhere accepted. In *Brown v. Parker*, 28 Wisconsin, 1, suit was brought in Wisconsin upon an Illinois judgment. Answering, the defendant alleged that the judgment was based on a Wisconsin contract which, under the laws of that State, had ceased to exist before the Illinois judgment was rendered, and that the judgment was therefore a nullity. An injunction against the enforcement of the judgment in Wisconsin was prayed and granted. In *Hazer v. Lyndonville Bank* (Vt.), 41 Atl., 1046, suit was brought in Vermont to enjoin attachment proceedings against corporate stock in New Mexico. Pending the suit, the attachment proceedings were prose-

cuted to judgment and the stock was sold. It was held that the jurisdiction of the Vermont court was not thereby defeated, but that upon proper pleadings the Vermont court could render a judgment for damages for the value of the stock which had been wrongfully converted in New Mexico. In *Main v. Field* (Ind.), 40 N. E., 1103, a citizen of Indiana sued a fellow citizen in Kentucky and seized there wages which were exempt under the laws of Indiana. The Indiana courts permitted the debtor to recover from the creditor the amount seized in Kentucky. The same relief was granted in the similar case of *Singer Manufacturing Co. v. Fleming* (Neb.), 58 N. W., 226. In *Kessler v. Kern* (Ind.), 28 N. E., 726, a citizen of Indiana by suit in Kentucky, seized wages of a fellow citizen which were exempt under the laws of Indiana. It was held that the debtor had three remedies available for the wrong done him: (1) Injunction to prevent prosecution of the Kentucky action; (2) An action *ex delicto* to recover damages sustained by the prosecution of the Kentucky action; (3) An action *ex contractu* for money had and received, to recover the money seized in Kentucky. The debtor having sued to recover damages for the seizure, the action was sustained.

McDonald, no doubt, had several remedies available to him. As soon as the Washington judgment had expired, he might have pleaded the Washington law in the Oregon court to prevent the rendition of judgment against him on the extinct judgment. But as held in *Main v. Field, supra*, it was not incumbent

upon him to seek relief in the Oregon courts. He was entitled to rely for protection upon the courts of the State of which both he and Roche were citizens. Had he desired to anticipate matters, he might have applied for an injunction in the Washington courts as soon as the Washington judgment had expired and before the rendition of the Oregon judgment, restraining Roche from taking judgment in Oregon in defiance of the Washington law. But again, it was not necessary that he do this. He did not reside in Oregon and had no property there, and the taking of a judgment in the courts of that State was a mere gesture. He could not suppose that if Roche did take judgment in Oregon he would have the effrontery to bring the judgment into Washington and there attempt to enforce it in the very teeth of the Washington statute. It was not until the judgment was sought to be enforced in Washington that it became a menace to McDonald. It is obvious that when it was so sought to be enforced, McDonald was entitled to the same relief by way of a defense to the action that he would have been entitled to had he defended the Oregon action or sought relief by an independent injunction suit against Roche.

V. The Argument in Roche's Brief.

The argument for Roche proceeds on the assumption that the Washington statute prescribing the life of judgments is one of limitations. From that premise it is argued that the statute of limitations of Oregon, not of Washington, governed the Oregon

suit, and therefore that it is immaterial what the Washington statute prescribed regarding the life of judgments. It is impossible as well as useless to deal with an argument based upon such an utterly erroneous premise.

However, among the decisions cited in the brief there are three which may seem, at least superficially, to be to some extent analogous to the present case. We shall briefly remark upon them in their chronological order.

Christmas v. Russell, 5 Wallace, 290. A promissory note made in Mississippi by a resident of that State was endorsed to a citizen and resident of Kentucky. After the Mississippi statute of limitations had run against an action on the note, the maker thereof, being temporarily in Kentucky, was there sued upon the note by the endorsee. The defendant pleaded the Mississippi statute of limitations and other defenses. Judgment was rendered against him and affirmed by the appellate court of Kentucky. Subsequently, the Kentucky judgment was taken into Mississippi and suit brought upon it. The only defense material to the case at bar was a Mississippi statute which provided that no action should be maintained on any judgment rendered by any court without the State of Mississippi against any person who, at the time of the commencement of the action in which the judgment was rendered, was a resident of Mississippi, in any case where the cause of action would have been barred by any limitation act of Mississippi had the

suit been brought therein. It was held that this statute was not a defense to the action on the judgment.

The cited case is distinguishable from the case at bar in these respects:

(1) The Kentucky action was upon a contract, not a judgment.

(2) The sole defense pleaded in the Kentucky action, so far as concerns the present case, was the Mississippi statute of limitations governing actions upon promissory notes. That was the ordinary limitation statute affecting the remedy, not the right, and consequently was not invocable in Kentucky.

(3) No question was or could be made concerning the validity and enforceability of the judgment in Kentucky.

(4) The jurisdiction of the Kentucky court to render the judgment was unquestioned. The defense made to the action upon the Kentucky judgment in Mississippi was based upon a Mississippi statute which attempted to give extra-territorial effect to the Mississippi statute of limitations governing actions upon contracts made in Mississippi. Of the nature of that statute, this Court said (p. 301):

> "Instead of being a statute of limitations in any sense known to the law, the provision, in legal effect, is but an attempt to give operation to the statute of limitations of that State in all the other States of the Union by denying the efficacy of any judgment recovered in another

> State against a citizen of Mississippi for any cause of action which was barred in her tribunals under that law. Where the cause of action which led to the judgment was not barred by her statute of limitations the judgment may be enforced; but if it would have been barred in her tribunals, under her statute, then the prohibition is absolute that no action shall be maintained on the judgment."

(5) The plaintiff in the Kentucky action was a citizen of Kentucky and there was no suggestion that the action was brought in Kentucky for the purpose of evading the laws of Mississippi.

Fauntleroy v. Lum, 210 U. S., 230. The facts stated in the opinion of this Court are that in an action in Mississippi upon a Missouri judgment, the defendant pleaded that the original cause of action arose in Mississippi out of a gambling transaction in cotton futures; that the defendant refused to pay a claim made against him on account of the transaction, and the controversy was submitted to arbitration; that an award was rendered against defendant and that thereafter, when the defendant was temporarily in Missouri, suit was brought against him on the award; that the Missouri court refused to allow the defendant to show the nature of the transaction and its illegal character under the laws of Mississippi, whereupon the judgment sued upon was rendered against him. Supplementing the facts stated in the opinion by those stated by the State court (32 So. 290), it appears that the defendant's plea upon which the State court based its decision averred that the plaintiff was a resident of Missouri at the time

the Missouri action was begun, and that the reason that the Missouri court refused to permit the defendant to prove the illegal character of the original transaction under the laws of Mississippi was that it held that the award of the arbitrators was conclusive, and the consideration of the award could not be inquired into. Referring to the opinion of the State court, it will be seen that the sole ground of its decision was that as the original transaction was contrary to the public policy of Mississippi, that State would look through all the transmutations which the original transaction had undergone and refuse to give effect to it by any judgment of its courts. It was this ruling which was reversed by this Court.

The cited case is distinguishable from the case at bar in these respects:

(1) The Missouri action was either upon an award of arbitration, as the Missouri court held, or upon the contractual obligation.

(2) The illegality of the original transaction, which was the sole defense pleaded in either the Missouri or the Mississippi action, did not go to the jurisdiction of the Missouri court to render judgment thereon. The Mississippi court does not appear to have construed the statute, and this Court held that the statute went merely to the enforceability of the cause of action and not to the jurisdiction of the court. As said by this Court (pp. 234-235):

> "No doubt it sometimes may be difficult to decide whether certain words in a statute are di-

rected to jurisdiction or to merits, but the distinction between the two is plain. One goes to the power, the other only to the duty of the court. Under the common law it is the duty of a court of general jurisdiction not to enter a judgment upon a parol promise made without consideration; but it has power to do it, and, if it does, the judgment is unimpeachable, unless reversed. Yet a statute could be framed that would make the power, that is, the jurisdiction of the court, dependent upon whether there was a consideration or not."

It will be recalled that the Supreme Court of Washington has held that the Washington statute limiting the life of a judgment goes to the jurisdiction, and that after the extinction of the judgment a court is without power to render judgment thereon.

(3) The decision of the Missouri court that the arbitrator's award foreclosed inquiry into the legality of the original transaction was, at the worst, merely erroneous, and therefore the judgment could not have been impeached in Missouri save, of course, by direct appeal therefrom.

(4) When the Missouri action was brought, the plaintiff was a resident of Missouri. There was no suggestion in either the State court or this Court that the action was brought in Missouri for the purpose of evading the laws of Mississippi, and at any rate the plaintiff was under no obligation to obey the Mississippi laws as would be a citizen of that State.

Kenney v. Supreme Lodge, 252 U. S., 411. This was an action of debt brought in Illinois upon a

judgment recovered in Alabama. The defendant pleaded that the judgment was for negligently causing the death of plaintiff's intestate in Alabama. Relying upon a statute of Illinois which provided that no action should be brought or prosecuted in that State for damages occasioned by death occurring in another State in consequence of wrongful conduct, the Illinois court held that as the original action could not have been maintained in Illinois, a suit upon a judgment based upon that cause of action could not be maintained in Illinois. It did not appear that either of the parties was a citizen of Illinois, and the validity of the judgment in the state where it was rendered was not questioned.

This decision requires the briefest of comment. The Illinois court construed the statute of Illinois to withhold jurisdiction from the courts of Illinois in the prohibited cases, and upheld the validity of the statute by reference to *Anglo American Provision Co. v. Davis Provision Co.*, 191 U. S., 373. The decision of this Court was that the cited case was inapposite because it dealt with the power of a foreign corporation to sue, and that Illinois could not withhold jurisdiction of its courts over an action based upon a judgment of another State.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 38—October Term, 1927.

John H. Roche, Plaintiff in Error, vs. D. K. McDonald.	In Error to the Supreme Court of the State of Washington.

[January 3, 1928.]

Mr. Justice Sanford delivered the opinion of the Court.

This writ of error is brought to review a judgment of the Supreme Court of the State of Washington which is challenged on the ground that the full faith and credit prescribed by § 1 of Art. IV of the Constitution was not given to a judgment of a court of the State of Oregon on which the plaintiff in error relied. As this does not present a ground for the writ of error under § 237 (a) of the Judicial Code, as amended by the Jurisdictional Act of 1925,[1] this writ is dismissed for want of jurisdiction. But since the papers show adequate reason for invoking a review by a petition for certiorari, that writ is granted,[2] and we proceed to the consideration of the case on the merits.

The parties to this suit have been for many years residents of Washington. On June 24, 1918, one Dart recovered a judgment for $12,500 against McDonald in a superior court of Washington. In February, 1924, Dart assigned this judgment to Roche. In March, McDonald being then temporarily employed in Oregon, Roche brought suit against him upon this judgment in a circuit court of that State. He was personally served with a summons, appeared and demurred to the complaint. This demurrer was overruled. He then elected to plead no further and did not answer the complaint. Subsequently, in October, 1924—more than six years after the rendition of the Washington judgment—judgment

[1] 43 Stat. 936, c. 229, printed as an Appendix to the Revised Rules of this Court, 266 U. S. 637.

[2] Sec. 237(c) of the Judicial Code, as amended.

was rendered against him in default of answer for the amount of the original judgment, with interest.

Shortly thereafter Roche brought this suit against McDonald, upon the Oregon judgment, in the superior court of Washington. McDonald answered, denying the validity of the Oregon judgment under a Washington statute which provided that after six years from the rendition of any judgment it should cease to be a charge against the judgment debtor, and no suit should be had extending its duration or continuing it in force beyond such six years.[1] Roche replied, setting up and relying upon the full faith and credit clause of the Constitution.

The superior court entered judgment for McDonald. This was affirmed by the Supreme Court of Washington; which held that under the Washington statute the original judgment expired at the end of six years from its rendition and could not be extended by another suit; that having been rendered when the original judgment had become a nullity, the Oregon judgment had no legal foundation, and, as it would have been void and of no effect if rendered under like circumstances by a court of Washington, could be given no force or effect when sued upon in Washington; and that under the due faith and credit clause the courts of Washington "are not bound to give full faith and credit to the Oregon judgment according to its literal terms, but are privileged and have the duty to view that judgment in the light of the foundation upon which it rests and the judgment law of our own state." 136 Wash. 322.

It is settled by repeated decisions of this Court that the full faith and credit clause of the Constitution requires that the judgment of a State court which had jurisdiction of the parties and the subject-matter in suit, shall be given in the courts of every other State the same credit, validity and effect which it has in the State where it was rendered, and be equally conclusive upon the merits; and that only such defenses as would be good to a suit thereon in that State can be relied on in the courts of any other State. *Mills* v. *Duryee*, 7 Cranch. 481, 484; *Hampton* v. *McConnel*, 3 Wheat. 234, 235; *D'Arcy* v. *Ketchum*, 11 How. 165, 175; *Cheever* v. *Wilson*, 9 Wall. 108, 123; *Hancock National Bank* v. *Farnum*, 176 U. S. 640, 643; *Tilt* v. *Kelsey*, 207 U. S. 43, 57; *Con-*

[1] Laws of 1897, c. 29; Remington's Compiled Statutes, §§ 459-460.

verse v. *Hamilton*, 224 U. S. 243, 259. This rule is applicable where a judgment in one State is based upon a cause of action which arose in the State in which it is sought to be enforced, as well as in other cases; and the judgment, if valid where rendered, must be enforced in such other State although repugnant to its own statutes. *Christmas* v. *Russell*, 5 Wall. 290, 302; *Fauntleroy* v. *Lum*, 210 U. S. 231, 236; *Kenney* v. *Supreme Lodge*, 252 U. S. 411, 415.

In *Christmas* v. *Russell*, *supra*, the defendant, a resident of Mississippi, executed there a promissory note, which was endorsed by the payee to the plaintiff, a resident of Kentucky. After action on this note had been barred by the Mississippi statute of limitation, the defendant having come into Kentucky on a visit, was there sued on the note. His defense on the statute of limitations of Mississippi was overruled, and judgment was entered for the plaintiff. The plaintiff then brought suit upon this Kentucky judgment in the Federal circuit court of Mississippi, where the defendant made defense under another statute of Mississippi, which provided that no action should be maintained on any judgment rendered against a resident of the State by any court without the State where the cause of action would have been barred by limitation if the suit had been brought within the State. The defense was overruled, and judgment entered for the plaintiff. This was affirmed here on the ground that under the full faith and credit clause this Mississippi statute was unconstitutional and void as affecting the right of the plaintiff to enforce the Kentucky judgment; the Court saying that since that judgment was valid in Kentucky and conclusive between the parties there, it was not competent for any other State to authorize its courts to open the merits and review the cause, or to enact that such a judgment should not receive the same faith and credit that by law it had in the courts of the State from which it was taken.

In *Fauntleroy* v. *Lum*, *supra*, the original cause of action arose in Mississippi out of a gambling contract in cotton futures. The laws of Mississippi made dealing in futures a misdemeanor, and provided that such contracts should "not be enforced by any court." The controversy had been submitted to arbitration, and an award made against the defendant. Thereafter, finding the defendant temporarily in Missouri, the plaintiff brought suit there upon the award. The court refused to allow the defendant to

show the nature of the transaction and its illegality under the laws of Mississippi, and entered judgment for the plaintiff. Suit was then brought upon this Missouri judgment in a court of Mississippi. Judgment was entered for the defendant which was affirmed by the Supreme Court of Mississippi. This Court, in reversing that judgment, said: "The doctrine laid down by Chief Justice Marshall was 'that the judgment of a state court should have the same credit, validity, and effect in every other court in the United States, which it had in the State where it was pronounced, and that whatever pleas would be good to a suit thereon in such State, and none others, could be pleaded in any other court of the United States.' *Hampton* v. *McConnel*, 3 Wheat. 234 . . . Whether the award would or would not have been conclusive, and whether the ruling of the Missouri court upon that matter was right or wrong, there can be no question that the judgment was conclusive in Missouri on the validity of the cause of action. . . . A judgment is conclusive as to all the *media concludendi*, *United States* v. *California & Oregon Land Co.*, 192 U. S. 355; and it needs no authority to show that it cannot be impeached either in or out of the State by showing that it was based upon a mistake of law. Of course a want of jurisdiction over either the person or the subject-matter might be shown. *Andrews* v. *Andrews*, 188 U. S. 14; *Clarke* v. *Clarke*, 178 U. S. 186. But as the jurisdiction of the Missouri court is not open to dispute the judgment cannot be impeached in Mississippi even if it went upon a misapprehension of the Mississippi law." This case was cited and followed in *American Express Company* v. *Mullins*, 212 U. S. 311, 314, holding that under the full faith and credit clause a judgment in one State was conclusive as to all the *media concludendi*, and could not be impeached in another State by showing that it was based upon a mistake of law.

In *Kenney* v. *Supreme Lodge*, *supra*, a suit was brought in Illinois upon an Alabama judgment based upon a cause of action which under an Illinois statute could not be brought or prosecuted in that State. This Court, in holding that the Illinois statute was repugnant to the full faith and credit clause, said: "In *Fauntleroy* v. *Lum*, 210 U. S. 230, it was held that the courts of Mississippi were bound to enforce a judgment rendered in Missouri upon a cause of action arising in Mississippi and illegal and void there.

The policy of Mississippi was more actively contravened in that case than the policy of Illinois is in this. Therefore the fact that here the original cause of action could not have been maintained in Illinois is not an answer to a suit upon the judgment. See *Christmas* v. *Russell*, 5 Wall. 290; *Converse* v. *Hamilton*, 224 U. S. 243."

The *Fauntleroy* case is directly controlling here. The court of Oregon had jurisdiction of the parties and of the subject-matter of the suit. Its judgment was valid and conclusive in that State. The objection made to enforcement of that judgment in Washington is, in substance, that it must there be denied validity because it contravenes the Washington statute and would have been void if rendered in a court of Washington; that is, in effect, that it was based upon an error of law. It cannot be impeached upon that ground. If McDonald desired to rely upon the Washington statute as a protection from any judgment that would extend the force of the Washington judgment beyond six years from its rendition, he should have set up that statute in the court of Oregon and submitted to that court the question of its construction and effect. And even if this had been done, he could not thereafter have impeached the validity of the judgment because of a misapprehension of the Washington law. In short, the Oregon judgment, being valid and conclusive between the parties in that State, was equally conclusive in the courts of Washington, and under the full faith and credit clause should have been enforced by them.

The judgment of the Supreme Court of Washington is reversed; and the case remanded for further proceedings not inconsistent with this opinion.

Writ of error dismissed; certiorari granted; reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.